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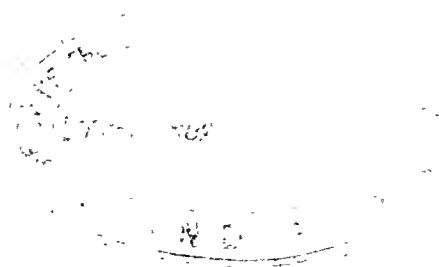
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# Indian Round Table Conference

(SECOND SESSION)

7th September, 1931—1st December, 1931

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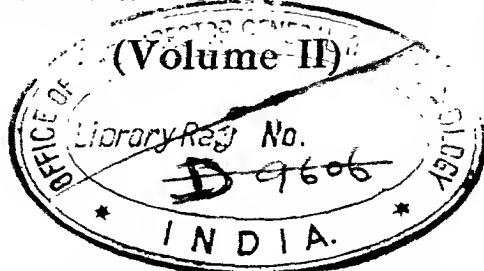
PROCEEDINGS

OF

FEDERAL STRUCTURE COMMITTEE

AND

MINORITIES COMMITTEE



CALCUTTA: GOVERNMENT OF INDIA  
CENTRAL PUBLICATION BRANCH  
1932

808.530954

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INTRODUCTORY NOTE.

Proceedings of the Second Session of the Indian Round Table Conference in Plenary Session will be published separately as a Command Paper, to which this volume is supplementary.

The Introductory Note to the Command Paper explains, briefly, the procedure adopted by the Conference at its Second Session.

### NOTE.

The following Heads for discussion were placed before the Committee by the Chairman:—

1. Strength and Composition of the Federal Legislature.
2. Questions connected with the Election of Members of the Federal Legislature.
3. Relations between the two Chambers of the Federal Legislature.
4. Distribution of Financial Resources between the Federation and its Units.
5. The Ministry and its Relations with the Legislature.
6. Distribution of Legislative Powers between the Federal and Provincial Legislatures, and Effect in the States of Legislation relating to Federal Subjects.
7. Administrative Relations between the Federal Government, the States and the Provinces.
8. The Federal Court.

It will be noted that: (*a*) the above Heads were not taken up by the Committee in numerical order; (*b*) Heads 5 and 6 were only partially discussed; (*c*) no discussion on Head 7 has yet taken place.

Detailed points for discussion in connection with each Head were drafted by the Chairman. They are printed in this volume at the commencement of the proceedings under the respective Heads.

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# FEDERAL STRUCTURE COMMITTEE.

## COMPOSITION :

Lord Sankey ( <i>Chairman</i> ).	*H.H. The Aga Khan (from 16th November, 1931).
*Mr. Wedgwood Benn.	*Dr. B. R. Ambedkar.
*Major W. E. Elliot.	*Sir Maneckjee B. Dadabhoy.
*Viscount Hailsham.	*Mr. M. K. Gandhi.
Sir Samuel Hoare.	*Mr. A. R. Iyengar.
Mr. H. B. Lees-Smith.	Mr. M. R. Jayakar.
The Marquess of Lothian.	Mr. M. A. Jinnah.
The Earl Peel.	Mr. T. F. Gavin Jones.
*Mr. F. W. Pethick-Lawrence.	*Mr. N. M. Joshi.
The Marquess of Reading.	*Pandit Madan Mohan Malaviya.
*H.H. The Maharaja Gaekwar of Baroda.	*Sir Provash Chunder Mitter.
H.H. The Nawab of Bhopal.	Diwan Bahadur Ramaswami Mudaliyar.
H.H. The Maharaja of Bikaner.	Sir Sayed Sultan Ahmed.
*H.H. The Maharaj Rana of Dholpur.	Sir Tej Bahadur Sapru.
*H.H. The Maharaja of Rewa.	Mr. Srinivasa Sastri.
H.H. The Chief Sahib of Sangli.	*Dr. Shafa'at Ahmad Khan.
Sir Akbar Hydari.	Sir Muhammad Shafi.
Sir Mirza Ismail.	*Mrs. Subbarayan.
Colonel K. N. Haksar.	*Sir Purshotamdas Thakurdas.
	Sardar Ujjal Singh.
	*Mr. Zafrullah Khan.

\* Denotes new members.

Sir Manubhai Mehta acted as substitute in the absence of H.H. The Maharaja of Bikaner.

Lord Snell acted as substitute in the absence of Mr. Wedgwood Benn, Mr. Lees-Smith and Mr. Pethick-Lawrence.

Rao Bahadur Krishnama Chari acted as substitute in the absence of H.H. The Maharaja Gaekwar of Baroda.

Mr. E. C. Benthall acted as substitute in the absence of Mr. Gavin Jones.



PROCEEDINGS OF THE FORTY-FIRST MEETING OF THE FEDERAL  
STRUCTURE COMMITTEE, HELD ON THE 26TH OCTOBER, 1931, AT  
2-30 P.M.

HEAD 8.

THE FEDERAL COURT—(continued).

*Mr. Garin Jones:* I enter into this discussion with some diffidence, for I am a layman, an amateur in the midst of experts. However, I feel towards experts in general in much the same way as certain Delegates expressed themselves about experts in another sphere a few days ago. We business men are accustomed to consult experts continually, and we have to view their opinions with discretion, because naturally professional bias is likely to come in. and we feel that we can view the matter in a more detached manner.

In dealing with this subject, I shall confine myself to general principles. We quite agree that there must be a Federal Court. We agree that the Federal Court should ordinarily be an appellate Court, but we think it should be an appellate Court for federal matters only. We agree that in certain cases, such as disputes between the Federal Government and the Units, it should have original jurisdiction.

We are of opinion that there should be a right of appeal from this Court for all matters to the Privy Council. Our reason for this is that, as many Delegates have already said, the Privy Council has great prestige. I may say that its prestige and authority are world-wide. An American lawyer once said to me that he wished that they had got in America a Court of Appeal anything like as good as the Privy Council in England. I think we would be making a great mistake if we were to discard this anchor of justice, to which nearly all the Dominions adhere. I think we would be making a mistake if we discarded it for India, anyhow at first. Moreover, I think I am right in saying that the Federal Court cannot be final in certain special cases. I believe I am right in saying that a British subject in certain matters, has a right of appeal to the House of Lords and the Privy Council.

As regards the appointment of the Judges, we are as insistent as anyone else that the Court should be absolutely independent of political influence, and, therefore, that the appointments must be made by the Governor-General. We also are of opinion that the salaries should be adequate and should be non-votable.

With regard to the selection of the Judges, both for the High Courts and for the Federal Court, I am in agreement with Sir Tej Bahadur Sapru when he says that there should be no reservation of appointments for any particular Service, but that the Governor-General should be able to select from the English Bar, the Indian Bar, and the Judicial Services. An appeal has been made that they should not be selected from the Judicial Services, and much

has been said on the question of the Judges being trained lawyers. I quite agree that they should be trained lawyers, but I see no reason why a Judge cannot be equally well-trained in a judicial service as at the Bar. A tribute has been paid to the Judges in the High Courts that have been selected from the Judicial Services; and although there may have been mistakes made, and Judges may have been selected who had not sufficient legal training, I think that this could be rectified by the better organisation of the Judicial Service. There is no reason why the Judges in this Service should not be adequately trained. I think I am right in saying that only in the British Empire and in the United States of America are the Judges chosen from the Bar. In the Latin countries, they are chosen from a trained judicial service; and I think that we should not discard the valuable field, for the selection of able Judges, that can be found in the Judicial Services. We must, I think, trust the selecting authority.

Now, Sir, a claim has been made that this Court should be a Supreme Court for appeals from the High Courts for civil and criminal cases. I strongly demur from this, because I feel that it would be very expensive and not so efficient, and it would be a dangerous experiment in which to involve the Federation to begin with. I asked Sir Muhammad Shafi how many Judges would be required if appeals had to be made to that Court for civil and criminal cases, and he put the figure at seven. Sir Sultan Ahmed has put the figure at eleven; and I obtained the opinion of a Chief Justice who has recently retired, and he put the figure, even with restrictions as to the appeals, at sixteen at least. Sir Provash Mitter has put the figure at from thirty to forty. Now, Sir, when there is such a variation in expert opinion, you must really view the matter with careful consideration; and I feel, knowing India as I do, that Sir Provash Mitter's estimate will not be far wrong, for undoubtedly a Supreme Court in India would encourage appeals. Undoubtedly the tendency in India is to appeal too far and too often. A very strong appeal has been put up by one or two Delegates that it is necessary on the grounds of expense to the litigant. On this question also, Sir, I made enquiries from a Chief Justice who has recently retired.

*Mr. Jinnah:* What was his name?

*Mr. Gavin Jones:* I am sorry; I cannot give the name, because he has not given me permission to do so; but I am quite sure that he would be only too glad to discuss the matter with the Lord Chancellor.

*Mr. Jinnah:* It is no use quoting a man who does not want to give his name.

*Mr. Gavin Jones:* Well, I dare say he would, but he has not given me permission to use his name, and I cannot do it. I am sorry. He said this:

“On the question of expense, it would appear *prima facie* that the expense of an appeal filed in India would be

less than that of an appeal filed in England; but strange as it may appear, this is not likely to be so. The expense of the record will remain constant. The appeal in India will be filed in some cases through Counsel instructed by solicitors, in others through Counsel not so instructed. In London it is through Counsel instructed by solicitors. In practice the expense will be higher in India even when the Counsel is instructed by solicitors. The reasons for this apparent anomaly are that the fees charged in India by Counsel with the qualifications that would be required in a Supreme Court of Appeal are very high. It is not at all unusual for Counsel appearing before a Chief Court, in appeals of importance, to receive daily fees of Rs. 1,000, 1,500, or even 2,000."

*Sir Sultan Ahmed:* Well, I wish it had been so.

*Mr. Gavin Jones :*

"Some of these appeals require, even before the most efficient and expeditious Benches, a hearing of ten days or more. It is practically impossible to hear, as a rule, more than three comparatively simple first-class appeals in less than two days. More complicated cases may take anything from three to twenty working days each. This is by no means an extreme limit. That is the hearing before strong Benches. Before weak Benches, it may be four times as long. In addition, there is a tendency in India to multiply the number of juniors. I have seen seven Counsel appear on one side in one appeal. I have made enquiries into the matter and have found that appeals in India have cost more than three times the amount to argue that they subsequently cost to argue before the Judicial Committee of the Privy Council. So far from giving the litigant more expeditious and cheaper justice, a Supreme Court is likely to give less expeditious and dearer justice."

I submit, therefore, that, when the matter is more carefully gone into, it will be found that a Supreme Court of Appeal for civil and criminal cases would be unwieldy, expensive, and in certain cases would not be final.

Now, Sir, as regards administration. The day-to-day administration of the Courts, I think, should rest with the Chief Justice; but when it comes to a question of finance, I cannot agree with Sir Tej Bahadur Sapru when he says that the control should be in the hands of the Federal Government unless, of course, the expenditure and the revenue of the High Courts is vested in the Federal Government—which is, I think, a proposal that was made by the Simon Report. If, however, the expenditure has got to be from the Provincial or Local Governments, then I think the control must rest with those Governments. To ask the Federal Government to order the Local Governments to vote supplies would be asking for a clash.

There is one point, Sir, that has not been made quite clear to me in the discussions that have taken place. That is, will a subject in a Provincial State have a right to appeal in federal matters against an Indian State Government? I think, in federal matters, it is only right that, if a subject of an Indian State has a right to appeal to a Federal Court, a subject in a Provincial State should also have that right. I would like that matter to be made clear. I think, Sir, I have nothing more to say on this subject.

*Mr. Iyengar:* Lord Chancellor, If I intervene in the discussion of this important question, amidst the array of distinguished legal talent which has been displayed on the subject, it is only for the purpose of giving a brief indication of what, in my view, from the constitutional standpoint, should be the purposes of the establishment and expansion of the activities of the Supreme Court in India. The principles with which we are concerned have been fully explained in your Note circulated to us and in your preliminary observations. They have been discussed from different points of view already here. There is first the proposal in regard to providing India with a Supreme Court, which would give her people a final Court of Appeal in their own country—more accessible and efficacious than has till now been provided by the Judicial Committee of the Privy Council. This is, if I may say so, purely a British Indian problem, though it must naturally be an integral part of whatever form of self-governing constitution is established for British India. There is next the question of providing a supreme federal judicial authority for the interpretation of the constitution, and for the administration and enforcement of federal laws in so far as they involve judicial intervention, or the exercise of advisory powers. And, lastly, there is the question to what extent the prerogative powers of the Crown to entertain appeals in Colonial cases, is, or can be, properly affected by the establishment of a Supreme Court in India exercising both supreme and federal jurisdiction. In considering this matter in the light of Colonial and Dominion parallels and precedents, there is one essential factor which alters the position and which has to be borne in mind. That is that, in respect of that important part of the Federation comprising the Indian States, there is no jurisdiction claimed by or conceded to the Privy Council to hear final appeals from any of them, whatever powers the States will concede to the Crown, for the building up of the new constitution, to be placed at the disposal of the new Federation—that is of the authorities and institutions created for the purpose of acting within the Federation. It, therefore, becomes necessary, in this behalf, for the States to assent to the establishment of a Supreme Federal Court in India to interpret the constitution and pronounce decisions on federal issues. This has been agreed to by them as set forth in the statement made by Sir Mirza Ismail on their behalf. The question whether, for the purpose of federation, this cession of powers should extend to their agreeing to the further jurisdiction of an outside authority

like the Privy Council, has been answered in the negative, and I think rightly. It would, therefore, from this point of view, be an entire anomaly if federal issues should be subject to the Privy Council's inherent jurisdiction, whatever it may be, where British Indians are concerned, and should be free from it where Indian States are concerned; and it might lead to a conflict of decisions on the same issues, which would be wholly undesirable. Moreover, speaking as a layman, I have been told that cession of jurisdiction on the part of the Indian States to British authorities, as distinguished from cession of territories, has raised difficulties, in some recent instances, of a very complicated character, where the source and authority of the Court are not purely British or British Indian; and it would not be the case in a Federal India where the authority of a joint Federal Legislature becomes established by constitution as well as by agreement with the federating Units.

You, My Lord, apparently contemplated the possibility of the Privy Council exercising jurisdiction in consequence of cession of powers by the Princes, and I have no doubt this would receive close examination at your hands. I have been informed in Madras that, in respect of an important project of port development, undertaken by the joint enterprise of two Indian States and British Indian Provinces which abut this port area, the question of joint ownership of this port and joint jurisdiction in its administration by a common authority and by a uniform set of regulations and laws has been a matter of legal examination, conferences and discussions for over ten years; and the matter is still being deliberated upon. It is hoped that final decisions will be made before the port scheme is actually completed in a year or two. At one stage, I have been informed, the proposal was made to establish what is called a *condominium* over the whole area of the port; but apparently that has now been abandoned, and further proposals are under consideration. There have also been cases in which jurisdiction in railway areas in Indian States has been ceded for certain purposes which are not entirely free from difficulties. Apart from the definite questions of sovereign rights and the wishes of Indian States in this matter, it seems to me the most proper course will be for the Indian States and the Princes to develop the prestige and authority of the Federal Court in India as India's own final national tribunal. From the standpoint of British India also, it seems to me equally clear that, whatever may be the extent and nature of the Prerogative rights of the Crown, India's final judicial authority should be established in India itself in such a national Supreme Court; and I do not think, having regard to the prestige and reputation of the great High Courts in India, we should at any time find difficulty in manning the Supreme Court or in maintaining it at the requisite standard. The history of the Dominions also seems to me entirely to support the view that the development of Dominion Status, as well as the proper evolution of a federal constitution, must necessarily eliminate, in practice, if not in theory, the jurisdiction

of the Privy Council. As Professor Keith has pointed out, the first breach in the traditional doctrine that an appeal lay to the Privy Council from the decision of any Colonial Court was made in 1900, when the Imperial Government accepted the demands of the framers of the Australian Federation that the interpretation and the decision of all disputes and constitutional issues arising from the establishment of the Federal Commonwealth should rest, not with the Judicial Committee of the Privy Council, as in the case of Canada, but with the High Court of the Commonwealth. The small extent to which appeals to the Privy Council from the Courts of the Australian States remained open was removed subsequently, in 1907; and in this manner, with the full and ungrudging assent of the British Government, the Australian High Court has been made the final arbiter of the interpretation of the Commonwealth Constitution. I need not refer to the disputes which has arisen over the constitution of the Irish Free State in this connection. All that I have to state is that the Imperial Government, in all these cases, has throughout acted on the principle of a ready acceptance of Dominion wishes; and I feel that the wishes of the Indian States, as well as of the bulk of my fellow-countrymen, are in favour neither of creating nor of keeping alive the jurisdiction of the Privy Council as part of the judicial constitutional machinery of the Indian Commonwealth after the establishment of the Federation. That is all I have to say.

*Dr. Shafa'at Ahmad Khan* : I shall confine myself only to two points—one, the question of the centralisation of the High Courts; and the other, the method whereby the fundamental safeguards can be imposed. I shall limit myself in this way partly because the ground has already been covered by very able and distinguished lawyers like Sir Tej Bahadur Sapru and Sir Muhammad Shafi, and partly because I am not sufficiently competent to discuss questions which require judicial training of the highest order and experience of the widest range.

I shall therefore deal with two points to which reference has been made by previous speakers. The first question is, should the High Courts be centralised? I differ from Sir Tej Bahadur Sapru on the question of the centralisation of the High Court. I do so, Lord Chancellor, with very great reluctance and with considerable hesitation, because I have the highest possible respect for the experience, the knowledge and the sound common-sense of Sir Tej Bahadur.

Before I deal with the question proper, I should like to make one or two points perfectly clear. In the first place, I should like to point out that, in the discussion of this matter, we are not concerned with the question of the appointment of the Judges of the High Courts or with their terms of office. On all these matters, I am in complete agreement with what Sir Tej Bahadur Sapru said in his speech. Again, it is not contended by me or by anybody that the administrative functions of the High Courts should be curtailed or withdrawn. I think it will be acknowledged

by everyone that a High Court cannot perform its functions efficiently and satisfactorily without exercising administrative functions. For instance, nobody has suggested that section 107 or the relevant portion of the Letters Patent should be curtailed. Now, while this is granted, it will be admitted by everyone that the administrative functions of a High Court should be open to discussion by the Legislature. I will not decide here which Legislature it should be, whether Provincial or Central. In other words, the High Courts should not be irresponsible in the exercise of their administrative functions. There must be control by some Executive and a power of control by some Legislature. Which Executive and which Legislature it is to be, I will, of course, discuss. Basing my arguments on these assumptions, the only question we have to decide now is by what executive authority such control should be exercised and in what Legislature these powers should be vested. In other words, should these powers be vested in the Central or in the Provincial Executive?

I do not deny the force of some of the arguments which have been used by previous speakers, with eloquence, ability and lucidity. There is, I admit, a danger inherent in any system which involves responsible government, that the High Court may be dragged into the arena of party controversy. I submit, however, that this danger is not removed or lessened by shifting the High Court to the Centre. So far as I have been able to gather, the local Legislatures have discussed administrative acts of the High Courts on various occasions. Many of the subjects discussed were in themselves eminently appropriate for public debate, though it must be admitted that some of the motions have not been debated in a proper spirit. The remedy for these defects, however, is to be found in amending the Standing Orders of the Legislatures and not in taking the entire control away from these bodies. There have been questions and discussions on the work of one Judge of the High Court—I will not mention his name—in my own Legislature; and there have been various questions in the different Legislative Councils with regard to the administrative functions of the High Courts. While there have been a few cases in which a certain amount of very unfair criticism has been indulged in, it must be said, on the whole, that the method adopted in dealing with these motions has been fairly satisfactory. This is indeed admitted by the Judges of the Bombay High Court, the Chief Justice and two Judges of the Allahabad High Court, and the High Court Judges of the Punjab High Court, who have said that their relations with the Local Government have been amicable and there has been so far no serious disagreement with the Legislative Council. So far as the Local Governments are concerned, in their Despatches to the Government of India on the Report of the Simon Commission, practically every Local Government emphasized the need of keeping the present relations of the High Court with the Local Government intact, without any modification and without any change. Only the official members of the Bihar Government

have suggested centralisation, and the Bengal Government also said that the High Court may be centralised if Courts in other Provinces are also centralised. Hence, the consensus of opinion of the various Local Governments is that the High Courts should remain in the position in which they now are, and also that there should be no disturbance or dislocation of the existing relations between the two bodies. I am therefore of the opinion that the rights which the Local Governments now exercise over the High Courts should be maintained, so far, of course, as their administrative functions are concerned. I need not go elaborately into the reasons for these views, but I hope you will allow me to summarise them as briefly as possible.

In the first place, if the High Courts are centralised, the Federal Government would not possess the local knowledge which would enable it to discharge its duties properly. The Local Governments are more familiar with the merits of candidates than the Federal Government can be. In the second place, there would be a serious risk of conflict between the Local Government, which must possess authority by virtue of its responsibility for the administration of a provincial subject, and the High Court, which will also continue to exercise the powers conferred upon it by section 107 of the Government of India Act. It is of the highest importance that the relations between the Courts and the Local Government should be those of mutual confidence and trust. The Local Governments must rely to a very large extent on the High Courts for the maintenance of a high standard of the judiciary in the Provincial Courts. These Courts cannot maintain such a standard without the support of the Local Government. One example will suffice. At present the High Court of Allahabad is empowered to remove a munsif without reference to the Local Government. If the High Courts are centralised, the question will naturally arise whether the Local Government will allow the High Court the exercise of these powers.

*Sir Tej Bahadur Sapru:* May I point out that, under the Bengal Civil Courts Act, the power of removal of munsifs is given to the District Judge and then to the High Court.

*Dr. Shafa'at Ahmad Khan:* I am only giving examples from the United Provinces.

*Sir Tej Bahadur Sapru:* That applies to Bengal, Assam, and the United Provinces and also, I believe, Bihar.

*Dr. Shafa'at Ahmad Khan:* Could the District Judge be removed?

*Sir Tej Bahadur Sapru:* Yes.

*Mr. Iyengar:* Yes, in all Provinces.

*Sir Tej Bahadur Sapru:* The Judge may be suspended?

*Mr. Iyengar:* Or suspended, yes.

*Mr. Zafrullah Khan:* There is power to suspend or submit for enquiry.



*Dr. Shafa'at Ahmad Khan:* I am using the exact words of the United Provinces Government to the Government of India. They must know what they are talking about. Again, the Oudh Chief Court has power to report or punish the ministerial staff of any Court subordinate to it. It is doubtful if the Local Government can allow any of its servants to be dismissed by an order of the Court which is under executive control by the Federal Government. Then, my third reason is that the new constitution will give the Ministry and the Legislature responsibility for the whole realm of Provincial administration. That range naturally includes the administration of justice. Even if the High Court is centralised, if the Council wishes to discuss the administration of the High Court, it will have no difficulty in doing so when the Demand for Grants for the ordinary administration of justice is presented to it. Many of the demands placed before the Legislature will continue to be based on the recommendations of the High Court. I can say, from my experience of the Council, that it is difficult to prevent a discussion of the High Courts, even after they have been centralised. In the next place, Lord Chancellor, it is in the local Legislature that complaints regarding delays in litigation, the location of Courts in various places and other matters are ventilated; and the procedure generally followed is that they are all passed on to the High Court, who, so long as they are under the control and administration of the Local Government, do pay attention to them. Then, there will be a risk of friction and aloofness between the Local Government and the High Court, and a most unfortunate and unseemly conflict might develop between the highest judicial body and the Local Government. In the High Court itself, amenities and scales of establishment would tend to be set up which would be out of proportion to those fixed for persons, departments and establishments somewhat similar in character. The personnel, discipline and working of the subordinate judiciary will be seriously affected by this change. Finally, if the High Courts are centralised, the expenses of the High Courts will have to be borne by the Central Government. If this is done, then the Judicial Stamps, I suppose, will have to be given by the Local Government to the Central Government; and if this takes place, it will be difficult for the Provincial Governments to pay their way, because in some Provinces Judicial Stamps form one of the greatest sources of revenue. For these reasons, Lord Chancellor, I am strongly of the opinion that the relation of the High Courts to the Local Governments should not be disturbed.

I will now take up the other point to which I referred, *viz.*, the methods which should be adopted for enforcing the safeguards. This subject bristles with difficulties, and one cannot be dogmatic about the remedy or the methods which one suggests; but I can start by saying that we are not concerned here with the content of the safeguards. This is a matter which is and will be dealt with by another committee. All that we need consider here is the method or machinery by which the safeguards should be enforced. What-

ever the safeguards may be, it is unquestionable that, if they are not to remain vague platitudes, and are intended to be enforced with the minimum of friction and delay and a maximum of effect, they should be laid down unambiguously and clearly. The agency or system or machinery, or whatever you may call it, for the purpose of enforcing these safeguards, will be the same with regard to all kinds of safeguards. The machinery will be, in the first place, the Central Executive. I use the words "Central Executive" in a much wider sense than that in which they have been used so far. The Central Executive, in the sense in which I use that term, includes the amalgam of powers, privileges, prerogatives and rights which the Crown will exercise over certain subjects—call them X—I will not mention the subjects. It will also include the powers with which the Federal Ministry will be endowed. The safeguards will therefore be enforced by this body. I am not discussing here which part of the Executive—the Crown or the Federal Ministry—will enforce the safeguards. An opportunity for that will, I hope, arise later on.

What, then, will be the chief categories of safeguards? In my humble opinion there will be three kinds of safeguards. In the first place, there are safeguards which affect interests such as the landlords and the European commercial community. In the second place, there will be safeguards which affect classes and communities, such as the Depressed Classes and religious minorities in India. Finally, there will be fundamental rights for the subjects of Indian States. On this subject I need say nothing. I have placed these safeguards separately, as I think there is a possibility of these rights falling short of those exercised by or granted to citizens of British India. If they are assimilated to the safeguards granted to the subjects of British India, nobody will be happier than myself. What, however, I should like to avoid is the possibility of our safeguards being brought down to the level of the safeguards which may be granted to the subjects of the Indian States. I am very much afraid that the fundamental rights which may be legitimately claimed by the British Indian subjects may be brought down to the level of those that may be conferred on the subjects of other States. Here I do not wish, and have never desired, to force the Indian Princes to grant their subjects fundamental rights of a particular kind or degree: but I am equally strong on the maintenance of such rights as are enjoyed now by or may be granted to the subjects of British India. My reason for separating these two kinds of safeguards is that, if they are mixed up, they will become so attenuated, they will be so watered down, as to become useless for all practical purposes. So, in order to preserve at least what I have got, and to stick to what I claim, I have decided it would be best, only for the purpose of classification, to have the category of safeguards of British Indians in a separate class by itself. My Lord Chancellor, I have made my position clear. I should like all safeguards to be perfectly alike: but if there is a danger of our safeguards being brought down to the level of those rights which

may be conferred on subjects of Indian Princes, then I should like to stick to what I have got or what I may get.

Having classified these safeguards, let me now indicate the method whereby they should be enforced. The matter does not apply to the safeguards as to the subjects of Indian States. I am leaving them completely out of account for the present—they apply only to the other two categories. There is one principle which governs and ought to govern all these safeguards, and it is this. The safeguards are fundamental. In other words, they cannot be amended, repealed or modified in any shape or form by anybody in India. No statutory self-governing body, no individual, and no Legislature, whether Provincial or Federal, can change them without a procedure which is clearly laid down and unambiguously expressed. What that procedure should be—whether they should be changed if the community, class or interest affected thereby consents, or whether some other method, such as the passing of a parliamentary Bill, amending these safeguards should be adopted—it is not for me to say here. What I should like to emphasise is that these safeguards should not be amended without the consent of the community concerned in a definite, prescribed, clear manner. How, then, should they be enforced? There are two agencies which I should like to indicate for effectuating this. In the first place, this can be done by the Governor-General in the case of the Central Government, and the Governor in the case of the Provinces; but as this question has not yet been properly discussed or exhaustively debated upon, I will assume that he will be the Governor-General. The power to be exercised by him must be exercised in all matters in which executive action is necessary. So far as the Governor of the Province is concerned, paragraph 6 of the Provincial Constitution sub-Committee's Report made the position clear, and I need say nothing about it. As regards the Governor-General, it is clearly essential to the efficacy of these safeguards that some power should be vested in him which will enable him to deal, not only with the laws actually made, but also with the executive action which is taken by or under authority of such law. The powers expressly conferred on the Governor-General for this purpose are to be exercised according to his deliberate judgment, after considering any advice which may be tendered to him by the Federal Ministry as well as by the Local Government and representatives of the class or community affected. Such a power for immediate action must be vested in his hands for the maintenance of rights guaranteed in the constitution. The right should be affirmative as well as negative. The class or community affected might draw the attention of the proper authority—here the Governor-General—to the violation of existing rights; or, if any change is needed in the working of safeguards, there should be a right of petitioning that authority and deciding the rights to be acquired by the community.

At what stage should the Supreme Court intervene? It is most difficult for me to say offhand and indicate the stage in a precise

manner. I may say, in passing, that I am alive to the danger of frivolous litigation if every aggrieved person of a particular class of the community is authorised to bring an action in the Supreme Court or petition the higher authorities for the enforcement of fundamental rights of his community or class. Some check ought most certainly to be imposed on the propensity of certain persons to litigation and contention. The only check I can think of is provided by laying down the rule that the Supreme Court can only intervene if it is petitioned, or if representation is made to it by a certain proportion of the representatives of the community in the Legislature. If two-thirds, for instance, of the total number of a particular class in the community apply or represent to the Supreme Court, then the Court should take action upon the petition.

*Chairman:* Of course, you had better say, having regard to the protection of minorities, two-thirds of those present and voting.

*Dr. Shafa'at Ahmad Khan:* Yes. As regards the exercise of authority by the Supreme Court in such instances, I think it would be conducive to the peace and tranquility of a Province if two-thirds of the representatives of a class or community voting, who are affected or think they are affected by a Bill, are allowed to ask the opinion of the Court on the validity of the Bill in question under discussion in the Legislature.

*Mr. Jinnah:* That means that two-thirds of the members shall be parties to the litigation?

*Dr. Shafa'at Ahmad Khan:* No.

*Chairman:* No. I think Dr. Shafa'at Ahmad Khan is speaking of the people in the Chamber.

*Dr. Shafa'at Ahmad Khan:* Yes.

*Chairman:* Supposing, for the sake of argument, there were 100 people representing a certain interest of the community, he said, if two-thirds wanted to go before this tribunal, they ought to have their way. Then I suggested to him that would have to be 66; but supposing 50 of them do not happen to be there through illness, it ought to be two-thirds of those present. It gives a much greater protection to all minorities.

*Mr. Jinnah:* I am much obliged to Your Lordship; but what I was trying to find out was this. Who will be in a position to move the Court—what number?

*Chairman:* Yes, I see what you mean. I suppose it would have to be a sort of representative action.

*Dr. Shafa'at Ahmad Khan:* It would have to be a representative action certainly. One man will be chosen on behalf of the others.

*Mr. Jinnah:* Two-thirds may not be able to stand the racket of the costs as parties.

*Dr. Shafa'at Ahmad Khan:* I agree entirely with the suggestion put forward by Sir Muhammad Shafi on the subject. If this is

done, it will prevent agitation, disorder and conflict. If, on the other hand, a Bill to which a particular class or community takes very strong objection, or to a part of which they take very strong objection, is proceeded with, and no action is taken until the Bill has passed into law, there is a possibility of the whole Province, and indeed the whole of India, being convulsed by agitation. I think, therefore, that the suggestion made by Sir Muhammad Shafi is very sound, practicable, and, if I may say so, very helpful. The Supreme Court will consequently be invoked in all cases of Bills or parts of Bills which violate, or which in the opinion of the community concerned, seem to violate, the fundamental law, as well as in all laws passed by the Legislatures and statutory self-governing bodies, which contravene these safeguards; but the Supreme Court cannot be asked to intervene in purely executive action, nor in matters which impose some positive duty on a body which has neglected to carry it out. Its function will be preventive. It will restrain a body—a Legislature, for instance, or self-governing body—from violating fundamental laws. For the positive work of protecting minorities, some other agency is needed, and that is apparently the Governor-General. The two will have to work together and will have to carry out the safeguards on principles to be determined. I acknowledge, Lord Chancellor, the difficulty in which the Governor-General will sometimes be placed. It is a very difficult position if he is asked from all sides to enforce safeguards of varying degrees of importance. It is a very difficult position for a Governor or Governor-General. I acknowledge the difficulty and I feel that in many cases it may be necessary to allow the Governor to get the matter decided by the Supreme Court, if the Governor is authorised to take the advice of the Supreme Court. I am fortified in this conviction by a provision on the Statute Book of Canada, which Your Lordship will find in section 4, repealing section 37 of the British North America Act, on page 238 of Newton's book. This is, in my opinion a very important and, I think, a very effective, measure for carrying out this idea, and with your permission I will read it:

“ Important questions of law or fact touching provincial legislation or the appellate jurisdiction as to educational matters vested in the Governor-General by the British North America Act, 1867, or by any other Act or law, or touching the constitutionality of any legislation of the Parliament of Canada or touching any other matter with reference to which he sees fit to exercise this power, may be referred, by the Governor in Council, to the Supreme Court for hearing or consideration; and the Court shall thereupon hear and consider the same. The Court shall certify to the Governor in Council for his information its opinion on questions so referred with the reasons therefor, which shall be given in like manner as in the case of a judgment upon an appeal to the said Court; and any Judge who differs from the opinion of the majority shall, in like manner, certify his opinion and his reasons.”

I have already said that, if a question arises which is of a very controversial character, and on which the Governor-General himself cannot form an opinion, or on which he is reluctant to come to a definite decision, he may be authorised to refer the matter to the Supreme Court for its opinion. I believe I am right in saying that this has been acted upon on a number of occasions; and, as Your Lordship knows, the history of section 93 of the British North America Act of 1867 is full of instances of various minorities affected by the provisions of that section bringing actions to the Privy Council, and also, I think, to the seat of Government in Canada. I suggest, therefore, that this principle may also be applied in the case of safeguards which it will be the duty of the Governor-General to enforce.

Lastly, Lord Chancellor, I shall deal very briefly with the advisory power of the Supreme Court. I regard this power as the pivot of the entire system of safeguards. I believe such power has been exercised in England with eminent success, and it has worked excellently in Canada. It has given uniform satisfaction in a number of American States, and it was provided for in Mr. Gladstone's Home Rule Bills of 1886 and 1892, and in the Government of Ireland Act of 1920. It is embodied in a number of new constitutions of Europe. In my humble opinion, it is impossible to make any safeguards effective without investing the Supreme Court with advisory power. The risk of conflict between the constitution and Statutes of the Provincial or Central Legislature is so great, the inconveniences of a system under which the citizens cannot tell whether their obedience is or is not due to a Statute are so serious, that a more effective measure is necessary. How is an investor to judge if he may safely lend money which a Statute has empowered a Provincial or the Central Government to borrow, when the Statute itself may be subsequently withdrawn and may be declared unconstitutional? Hence, it is necessary that the opinions of Judges should be asked without waiting for these questions to arise and be determined in an ordinary lawsuit. It procures a judicial and non-partisan interpretation, and procures it at once, before rights, interests, and, let me add, prejudices, have been created. This is also the opinion of the Commission on the working of the Australian Constitution. This is what they say:—

“In our opinion, the advantage of having the advice of the High Court upon the validity of legislation, before the community incurs the trouble and expense of acting upon legislation which may or may not be valid, outweighs the objection to any judicial pronouncements being made as to the validity of legislation except in regard to a concrete case in litigation instigated between parties.”

If any community or class raises any objection to any section of a Bill, and if it is not thought desirable to hold up the entire measure owing to such an objection, a provision may be made in the Act that it shall not come into force until a date to be fixed by the Governor-General or the Governor as the case may be, and the latter may

refer the Bill then to the Supreme Court for its advice. The Australian Commission, in fact, recommends the alteration of the Australian Constitution and provision for the insertion of these amendments.

I will conclude by venturing to refer you to the Explanatory Note on the Report of the United Provinces Simon Committee, pages 330—370, which I wrote three years ago, and which is included in Volume III of the Report of the Simon Commission. I cannot go into details here, but I have quoted a number of laws and Statutes of different foreign Governments dealing with safeguards for minorities in that Note.

*Mr. Jinnah:* How will the Governor-General act?

*Dr. Shafa'at Ahmad Khan:* He will act as is necessary, or according to the advice he receives. How can he act excepting one way or the other?

*Mr. Jayakar:* Lord Chancellor, I am very grateful to Your Lordship for giving me an opportunity of making my observations upon some of the points which have been raised in the course of this debate. It is not possible for me, having regard to the short time at our disposal, to go into the whole field of discussion. I shall therefore confine myself to just a few points and make my observations under distinct headings, so that my remarks may be perfectly clear.

As regards the necessity for a Federal Court, there cannot be two opinions. Speaking of its jurisdiction, I agree that it should have an exclusive original jurisdiction; also an appellate civil jurisdiction; thirdly, an original criminal and appellate jurisdiction; and last, an advisory jurisdiction.

Under the first heading—exclusive original jurisdiction—I would make the first category of all cases arising under the constitution. Having regard to the fact that the expression “arising under the constitution” has caused, in several Statutes of the Dominions, difficulty about interpretation, and having regard also to the views which were so clearly expressed by some members of the minorities (notably by Dr. Ambedkar and Dr. Shafa'at Ahmad Khan), I think it would be advisable to placate the feeling of apprehension on the part of the minorities by inserting in our constitution, as falling under the words “arising under the constitution,” the following five groups of topics.

My first group would be, as “arising out of the constitution,” all matters relating to powers conferred by the constitution; (2) privileges granted by the constitution; (3) rights to be claimed under the constitution; (4) protection secured by the constitution; and (5) prohibitions contained in the constitution itself, apart from the Statutes of the Federal Legislature. I think it will be advisable, although the constitutions of the Dominions do not do that, to insert in our constitution, as illustrative of what “arising out of the constitution” means, these several headings, so that the questions about which the minorities are apprehensive, for instance, the

violation of fundamental rights, or the apprehensions of the commercial community, as regards discrimination, between sections of His Majesty's subjects, might be provided against. That would be the first group in which there would be exclusive original jurisdiction in the Federal Court.

My next group would be all matters which involve an interpretation of the constitution.

My third group would be all matters which arise, either between the States *inter se* or the Provinces and the States, or matters which arise out of treaties between the several Provinces and the States. I am not here suggesting—and I need not frighten the Ruling Princes—that the treaties of which I speak are the Treaties between the Ruling Princes and the Crown, although I may express a wish that, in course of time, as more confidence is created in the Federal Court, say in the next fifteen or twenty years, even those Treaties might pass under the review of this Court; but that is a matter for the future. The treaties of which I speak at the present moment are treaties between the several Units of the Federation—for instance, a commercial treaty which Bombay enters into with Madras for the protection of mutual rights. Such a treaty would fall under the group which I am suggesting.

My next group will be that all admiralty and maritime cases which arise in course of time should be referred to this Federal Court. At present, some of them are tried by the High Courts, and this causes considerable inconvenience. I therefore suggest that, wherever a maritime or admiralty case arises, it should be within the exclusive jurisdiction of the Federal Court.

My next group will be all cases where orders in the way of mandamuses, writs of certiorari, or any other prohibitory orders against an officer of the Federation are sought. That should be in the original exclusive jurisdiction of the Federal Court.

Now, the class which comes under the next heading, namely, matters arising under Federal Acts—that is, Acts of the Federal Legislature—I fear, cannot be made the exclusive jurisdiction of the Supreme Court, for under this category will fall some Acts of the nature that you suggested, Sir, in the early part of this debate. For instance, the Federal Legislature passes a commercial Act relating to bills of lading or bills of sale or the laws of inheritance relating to a particular community. It is a Federal Act in the sense that it is passed by the Federal Legislature; but we cannot so ordain things that, wherever a question relating to the interpretation of this Act arises, the trial shall take place at the Federal Court. We cannot have it because most of these questions will arise in the course of Provincial litigation or litigation in the Indian States; and you cannot, therefore, provide that, in all cases where questions relating to such Acts as are Federal Acts arise, they will automatically be taken to the Federal Court and tried by no other Court. I am therefore suggesting that, in such cases, we shall have to give the power of such cases being heard by Pro-



vincial and State Courts, with a right of appeal to the Supreme Federal Court. I am therefore putting these cases under an entirely different category. Now, there is a cross-division, which I wish to suggest at this stage, from the point of view of parties. I would suggest that, speaking generally, all cases of the foregoing character which arise between the Federation and a Unit or between two or more States or Units of the Federation, all cases between a State and its citizens or a Province and its citizens, and thirdly, all cases between citizens of different States or different Provinces, must be tried by the Federal Court. Fourthly, there may be cases, as have occurred in certain Dominions, where the inhabitants of the same State claim under the law of two different States—for instance, under a grant made by two different States; and cases which come under this category must be tried by the Federal Court. Lastly, I suggest a category for your consideration, and for the future consideration which may be carried on by this Round Table Conference or its Committees, as regards disputes arising in connection with all foreign nationals who may be living in India. I would submit that it would ease considerably situations like those which arise with regard to extra-territorial rights, and which are even now causing a considerable amount of difficulty in places like China, if we could agree at once that all questions which arise with reference to foreign nationals shall be heard by the Federal Court. This may enable India to acquire rights of trying foreign nationals, by transferring such power to the Federal Court; and it would inspire more confidence. If so, then I think we ought at once to concede that this power should reside in the Federal Court in the first instance and also as a Court of Appeal.

Now, as regards the next question which has been raised—as to giving Federal jurisdiction to other Courts—I am of opinion that we should proceed very cautiously. This Federation is a new experiment. The Federal Court is a new experiment. I would submit that we ought to be content for the present with having one Federal Supreme Court at the centre, wherever you locate it, with a jurisdiction, civil, criminal, appellate and original. But I would agree that the power should be given to the Federal Legislature to create additional Federal Courts, either in the Provinces or in the States, or to invest existing Courts, either in the Provinces or in the States, with Federal jurisdiction. That power may be given to the Federal Legislature and should be mentioned in the constitution; but I should be very careful not to invest with this Federal jurisdiction more than one Court at the centre, for the present, until we see how this experiment works. If the experiment succeeds, then the Legislature may exercise these powers which are given by the constitution, and create either new Federal Courts in the Provinces or States or invest with Federal jurisdiction existing Courts in the Provinces or the States. But I should begin this experiment very cautiously.

The next thing I would provide in the constitution, in connection with this matter, would be the power to give advice, namely,

a power of answering references made to the Supreme Court. I would provide for it in four cases. The first would be for the Governor-General to refer a case on any constitutional question for the determination of the Federal Court—the Governor-General either himself or in Council. If you think that, during the transitional stage, it should be the Governor-General alone, I have no objection, although I should prefer to make it the Governor-General in Council. The next case should be on reference at the request of the Federal Legislature, Lower or Upper House, with reference to Bills which are alleged to contravene some provision of the constitution, like fundamental rights affecting religion or the religious tenets of a particular community. On this point, I differ a little from the suggestion made by Sir Muhammad Shafi. I would not draw the President into the controversy at all. My experience is that these controversies sometimes become extremely bitter.

*Sir Muhammad Shafi:* May I just make one thing clear, so that there may not be any controversy about it? My main object is reference of those questions in those circumstances. Whether the reference is made by the Governor-General or the President is immaterial.

*Mr. Jayakar:* I would, in that case, make the following suggestion for the consideration of Sir Muhammad Shafi. I would make the President refer the matter to the Governor-General, who is often in a position to take a detached view; and the President would be saved from being drawn into what may become a bitter communal controversy. I would, therefore, suggest that the President should make reference to the Governor-General, and the Governor-General, after exercising his mind on it, should either make the reference or give some advice which lulls the embitterment. My third group would be that the Governor of a Province, either by himself or in Council, should have similar power of making the reference. My last group would be references by Judges of the Provincial High Courts; and I should welcome such a power, if the Indian States require it, for their superior Courts, of referring certain questions for determination by the Federal Court. How these questions will come up before the Provincial High Courts I shall mention presently.

Before I leave this topic, I should like to make one suggestion. I should give power, on the lines of section 78 of the Australian Constitution, to the Federal Legislature to make laws conferring rights to proceed against Federating Units. At the present moment, there are many States where this right is not allowed; and I would, with due submission, make this suggestion to some of the States where the right to sue the State is not allowed to the citizens of that State. I do not want to mention any names, because it would be invidious to do so. I quite agree that, in the more important States, this right does exist—the right on the part of the citizen to sue the State, as in British India you can sue the Secretary of State for wrong done by him or his agents. I would submit, for the consideration of those States where such a right does not exist,

that the working of the Federal Constitution would become considerably easier if such a right were conceded to the subjects of those States where it does not exist at present. As the question is somewhat delicate, I do not want to go further into details.

Then, coming to the important question as regards whether the Federal Court ought to have appellate jurisdiction in non-Federal matters, about which a considerable amount of controversy has been raised, I agree with the principle which was expressed by Mahatma Gandhi that India should have, at least as an ideal, if we can work up to it, a completely self-contained judicial system. I agree with that ideal, and I hope we shall work up to it speedily; but I fear that, having regard to the sentiments which have been expressed by the State representatives here, it would be an incomplete picture unless the States were prepared to fall into line and give a right of appeal to the Federal Supreme Court in non-Federal matters. Otherwise, the difficulty would be that there would be a right of appeal, so far as British India is concerned, in non-Federal matters, and as regards the Indian States there would be no right of appeal. I should therefore submit, for the consideration of the Indian States, whether by some kind of convention it is not possible to concede a right of appeal to the Supreme Court. But that is a matter for the States to decide. I do not wish to be dogmatic about this question. I only point out that this is either a complete system or not adopted at all. I cannot concede a state of things in federation where the Federal Court is the Court of final appeal as regards non-Federal matters, so far as British India is concerned, but, as regards the Indian States, it does not perform any such function at all. The difficulty will be exactly that expressed by Sir Akbar Hydari when dealing with this question from another aspect. Your Federal Court will gradually divide itself into two parts. Already signs are appearing that one would be called the "Supreme" side and the other would be called the "Federal" side. The "Supreme" side would be the final court of appeal for British India in non-Federal matters, and the "Federal" side would be so with regard to Federal matters for the whole of India. I fear it will divide the Federal Court into two divisions, which will diverge from each other; and then different standards will be expected from the Judges. Already Sir Akbar Hydari has stated that, with regard to Federal questions, matters of constitutional law will arise. He says that a man may be a good criminal lawyer and judge and a good civil lawyer and judge but may not know anything of constitutional law. Therefore, it was suggested—I think rightly—by Sir Akbar Hydari that, so far as the "Federal" side of the Court is concerned, you want in your Judges different kinds of qualifications from those which you require on the "Supreme" side of the Court. Therefore this division—this process of bifurcation—may increase gradually. You will have a "Supreme" side and a "Federal" side; and the cry will go up eventually, I am sure—why should the Indian States pay for the "Supreme" side of the Federal Court, which is purely a court of appeal for British India and not for the States? This, in my opinion, will ruin your

Federal Court. I am therefore anxious to make a beginning. As we advance, we shall go on developing. But if you begin with this distinction as to the Provinces of British India, my fear is it will ruin your Federal Court and possibly make the "Supreme" side of it more important, more attractive, and more popular. With regard to the matters which will engage the attention of this Court as an appellate Court for British India, I fear that this side of their work will engage the attention of the Judges to the exclusion of Federal questions. We have heard the figures given by Sir Provasch Chunder Mitter, Sir Sultan Ahmed and Sir Tej Bahadur Sapru. If I may add my own experience, I suppose it is quite safe to take a figure of between 300 and 400 appeals in a year. If you take four Judges sitting the whole year—which means only six months, taking into consideration the time for which the Courts sit—then it will occupy four Judges for the greater part of the year; and I fear that, unless you have some provision by which matters can be expedited, your "Supreme" side will absorb most of the attention of the Court.

What I am anxious about is that we should not make two experiments at once. Our Federal Court is an experiment; we do not know how it is going to work. If you tack on to it, as it were, a Privy Council in India, I am afraid it will overweight the experiment, and I do not know how it will succeed. I am for caution, and would, therefore, begin with one experiment at a time. When it succeeds, you can by all means tack on another to it, and make your judicial system self-contained in India. Another difficulty I feel in this connection is this—that, whatever we do, we cannot do away with the jurisdiction of the Privy Council in so far as it represents the Prerogative of the Crown. I hope it is clearly understood that, however much we may try, we cannot do away with the Prerogative of the Crown to hear cases as the final court of appeal, either by giving special leave or as a matter of right under Orders in Council. I think I am pretty sound constitutionally when I say that, by both these methods—by special leave and by Orders in Council—the Crown can exercise this right; and the citizen has a right to go to the Crown. However much we may try, we have no power to make a constitutional experiment by which we would wipe out the power of the Crown or the right of the citizen to approach the Crown as a final court of appeal, either by special leave or by Order in Council. I am anxious we should not get into the controversy which resulted in Australia from the enactment of subsection 2 (a) of section 39; and, in this connection, I invite careful attention to the observations of Their Lordships of the Privy Council, made in the well-known case of *Webb v. Outtrim*, reported in 1907 Appeal Cases, page 81. These remarks are very valuable from this point of view.

*Chairman:* Was that a judgment of Lord Loreburn?

*Mr. Jayakar:* I think so. I am anxious we should not get into all this trouble at the beginning of our experiment. I find in section 106 of the Constitution of South Africa—which was more ready,

if I may say so for federation than we can be for a few years—that they made an attempt to do something like this. They provided that no appeal should lie to the King in Council, and so on; but they were compelled to add to the section the following words; “Nothing herein contained shall be construed to impair any right of the King in Council which he may be pleased to exercise to grant special leave to appeal” and so on. I think it is futile to think of attempting to abolish this right of the Crown and its subjects by a mere stroke of the pen. It can be abolished by the growth of popular sentiment, I agree; but it is absurd to think of abolishing it by legislation, because you have not the power to do so. You may provide so, but any suitor can come before the Privy Council here and move the Council for special leave to appeal, and all your constitution is powerless against that remedy. I think, therefore, that this endeavour to do away with the jurisdiction of the Privy Council is somewhat futile, if I may say so. It can only be successful when public opinion has so far been educated that we do not want to go outside our own constitution for the sake of enforcing our rights.

So much for the right to deal with non-Federal questions. Coming to criminal jurisdiction, I would allow an original and an appellate jurisdiction. The original jurisdiction should be confined to offences against Federal Acts, and also all criminal offences in which foreign nationals are concerned. You will thus get rid of these difficulties which European criminals in India at present introduce, in regard to the jury being composed of so many Englishmen or so many Frenchmen, and so on. I see a possible way out of the difficulty if you transfer to the criminal side of the Federal Court all trials in which foreign nationals are concerned. I do not want to be dogmatic; I merely want to make a suggestion. Possibly in that direction we may seek an easy solution of the racial question relating to foreign nationals.

*Sir Sultan Ahmed:* If the offence is committed in Madras, would you bring all those concerned to the Federal Court?

*Mr. Jayakar:* I would leave it to the man accused to claim that right if he wants to be tried by the Federal Court, but I would give him the right to be so tried if he so desires it.

*Mr. Zafrullah Khan:* The right to compel witnesses and everyone else to come to Delhi?

*Mr. Jayakar:* Yes, if thereby the racial question will become more easy. I only make that suggestion for consideration.

*Mr. Jinnah:* Would you confine that to particular kinds of offences or is it to apply to any offence?

*Mr. Jayakar:* That is a matter for consideration. It might be confined to offences involving the death penalty, and so on.

*Sir Sultan Ahmed:* There is no racial question now in trials.

*Mr. Jayakar:* Seemingly not, but I am afraid there is a good deal of it yet under the surface.

*Mr. Zafrullah Khan:* If you will excuse the interruption, I should like to ask whether your suggestion that the Federal Court should have jurisdiction to try offences against Federal laws means offences by anybody.

*Mr. Jayakar:* At present I am dealing with foreign nationals. I would not necessarily make every offence against Federal law triable by the Federal Court, but offences against constitutional law should be considered carefully.

*Sir Muhammad Shafi:* What does Mr. Jayakar mean by offences against constitutional law?

*Mr. Jayakar:* Certain offences against the State, like waging war. I have not gone into details because there is no time; but I would certainly submit that some offences which at the present moment are offences against the State—offences like waging war or creating a rebellion—should be so dealt with.

*Sir Muhammad Shafi:* That is an offence under the ordinary Indian Penal Code.

*Mr. Jayakar:* At present it is the Indian Penal Code, but it will become a Federal law in the course of time.

*Mr. Iyengar:* The Penal Code will be separated into Federal and non-Federal sections?

*Mr. Jayakar:* Ultimately the criminal law will become Federal; at present it is not.

*Chairman:* Have you an Act in India like our Foreign Enlistment Act?

*Sir Tej Bahadur Sapru:* No, we have no Act like that, but the Foreign Enlistment Act has been extended to India.

*Mr. Jayakar:* I am speaking of such offences as affect the whole Federation. I am not in a position to state exactly offhand what those offences would be, but I should certainly remove them from the purview of Provincial Courts. It is my experience that these offences, when they are tried in the locality where they occurred, are not always judged in an atmosphere of dispassionate coolness; and I would, therefore, remove those offences—only just a few—like waging war or raising rebellion or those against military laws—it is a matter for further enquiry. I would take them into the hands of the Federal Court of criminal jurisdiction. Then, coming to the other class which Sir Muhammad Shafi suggested, namely, murder cases involving a death sentence, or transportation for life (which was added by Mr. Zafrullah Khan), I should very much like that to be done; but I fear, having regard to the cases which are likely to arise, it is not possible. I only speak of my own Court and of the side on which I practise. We have two sides in the Bombay High Court, one which deals with *mofussil* cases and one which deals with criminal cases which arise in the city. There are two different Courts that hear these cases; and, speaking from my knowledge of the *mofussil* cases, I should say that the class of cases where the final penalty of the law—namely, death or transportation

for life—is inflicted, may be taken roughly as two a week or eight in the course of a month.

*Mr. Zafrullah Khan:* Are you referring to the suggestion that Sir Muhammad Shafi and I made with regard to cases where an acquittal recorded in the High Courts is converted into a conviction on appeal?

*Mr. Jayakar:* I must have misunderstood you. I thought you referred to all cases where the extreme penalty was inflicted.

*Sir Muhammad Shafi:* I referred to both the classes of cases—cases in which a High Court converts an acquittal into conviction. . . . .

*Mr. Jayakar:* Those would be very few cases.

*Sir Muhammad Shafi:* . . . . . and also ordinary cases of murder and so on.

*Mr. Jayakar:* Yes; I am dealing with that class now. I should very much like that to be done; but I fear that the numerous cases which will come up will make it impossible. I think, in Bombay, on the *mofussil* side alone, there will come up about 130 cases per annum; and, as regards all the other Provinces you can easily judge the number. I fear that it is not possible to do that, although I should certainly like that, in the case of the final penalty of the law, the Federal Court should have the final word.

Then I pass on to the next important question—namely, I should like some provision to be made in the constitution enabling Federal India, the British Indian Provinces and the Indian States to sue or be sued in their representative capacity. There may be difficulty about that, but I should like to have some provision in the constitution giving power to the Federal Legislature to provide that the Federation and the Units might sue or be sued in a representative capacity. This causes considerable trouble at the present moment. All that should be avoided by a distinct provision in the constitution.

Speaking of the Judges, I agree that they should be selected from the Bar and from the Judicial Service; and I would go further, and say that the provision which relates to appointments in the High Court—namely, that the Indian Civil Service should have a quota of one-third at least—should disappear. If they come in as distinguished members of the Judicial Service, I have no objection; but they should not come in *qua* Civil Servants—that is my objection. Therefore, if any Civil Servant has distinguished himself as a High Court Judge—and there have been many who have done so—I have no objection that he should be promoted to be a Judge of the Federal Court. The Judges should hold office during good behaviour, and the safeguards for their independence, I would submit, should be at least two, the first one of which should be on the lines of section 72 of the Australian Constitution, which provides that they are not removable except by the Governor-General in Council on an Address from both Houses in the same Session. I should make that compulsory. I do not want a kind of can-

vassing going on between two Sessions. I would provide for an Address from both Houses in the same Session asking for such removal for proved misbehaviour or incapacity, and not merely suspicions of the same. I would repeat that provision, because I think it contains a very valuable safeguard. My next safeguard will be something in the nature of the United States Constitution, Article III, Section 1—namely, that they should receive a fixed remuneration which should not be reduced during the time that they are holding office. In some constitutions we find that safeguard. I should reproduce it in the Indian constitution.

*Chairman:* I think there was a decided case only a few years ago which said they need not pay Federal Income-tax, which is a very wonderful decision!

*Mr. Jayakar:* Then there is one more provision which I would suggest for consideration—I have not made up my mind about it—whether it would be advisable, at least in the transitional period, to make their salaries non-votable. I merely make the suggestion that, in the transitional period, it might be a good safeguard, because a number of questions will come up for their determination, and possibly they would like to have a greater feeling of security. I therefore suggest for consideration whether it would be right to provide that, for ten years, their salaries should be non-votable. I am only making the suggestion as to whether it would give them more protection.

Then, the Chief Justice would have the power to prescribe rules as regards the admission of Counsel to practise before the Federal Court—which, I submit, is a matter of very great importance if you want to maintain the dignity and the prestige of the Bar which is to grow up in this Federal Court—and also as regards the conduct of proceedings, whether three Judges or more or less should hear appeals on constitutional points. In all those matters, which I do not want to go into, I should give the power to the Chief Justice to prescribe rules providing for the conduct of business, and also for the admission of Counsel to practise before the Federal Court. The appointment of the staff will also rest with the Chief Justice.

Then, as regards the point which Your Lordship raised—namely, the enforcement of its decisions—I think the point is very material when one comes to consider decrees of the Federal Court in its original jurisdiction. On its appellate jurisdiction there will be no trouble, because the court of first instance will execute the appellate decree; but the point becomes material in cases where the original decrees of the Federal Court are concerned, and in that case I quite agree that there should be some provision by which the enforcement would be carried out without hitch. I would reproduce the provisions in this connection of Section 111 of the South African Constitution and also Section 112. Section 111 provides that judgments and orders shall have the same force and shall be executed in like manner as if they were judgments of the High Court in that Province, and Section 112 gives power to the



Registrar of the High Court of that Province to issue a writ for execution as if it was a judgment of that High Court. We might do well to reproduce these two provisions. Of course, the point raised by Dr. Ambedkar, as to the ultimate repository of military power, is a question into which I do not wish to go, because it is not really a constitutional point. It is really a question of the working out of the Constitution, and I do not wish to go into that question at all.

Then, as regards the venue of the Court, my view is somewhat different from that of Sir Muhammad Shafi, and I would select a venue which satisfies these following tests: first, that it is central compared to the whole of India, not located in one part like Simla or Delhi. My next test would be that the climate should be such that work could proceed there for the whole year, and not merely for six months, as, for example, at Delhi. You cannot work at Delhi for the whole year. I would select a place somewhere in the centre, for example, Pachmarhi, which would be equally accessible to all parts of India, and which had an equable and temperate climate for the whole year. Delhi is not a place of that description. My last suggestion is that it should be at some place which is not the seat of the capital either of a Provincial or the Central Government. I wish this Court to be located at some place where there is no Executive Government to confabulate with. I am not suggesting anything wrong. I should certainly like to have this Court at a place where it is the most supreme power so far as that particular place is concerned—where there are no chances either at dinner or parties of confabulation. I should therefore put it in a place where there is no seat of Government either Provincial or Federal. That is my suggestion. I am sure it is possible to find such a place in India. The Court should be in a place which is absolutely neutral.

*Sir Sultan Ahmed:* And, apparently, inaccessible.

*Mr. Jayakar:* Now I come to one or two questions which arose incidentally. Your Lordship remembers that Sir Tej Bahadur Sapru dealt with some questions relating to the existing High Courts. I have one or two suggestions to make on that. I am referring to the power to appoint additional Judges. I know the harm it has caused. I do not wish to mention the details because they are not quite creditable to that part of my profession with which they are concerned. There should be no power to appoint additional Judges. I quite agree with Sir Tej Bahadur Sapru's suggestion. Then again, an absurd practice has grown up of hearing second appeals through a Bench consisting of only one Judge. That is absurd.

*Chairman:* I have never heard of that.

*Mr. Jayakar:* I think that ought to be put a stop to.

*Sir Tej Bahadur Sapru:* The consequence of that is that an appeal lies from the decision of one single Judge to two Judges; and again, if those two Judges differ, there is a possibility of a

case going up before a full Bench. Now, what the Judges of the High Court have done to counter that mischief is that they have raised the pecuniary limit of appeals going up before single Judges; but that is not a very effective way of doing it.

*Sir Muhammad Shafi:* In our Court what they have done is this, that when a second appeal of that type comes up, the Judge before whom it is placed calls in another Judge and makes him sit with him; then the two of them sign the Order.

*Mr. Jayakar:* In my part of the country, even the pecuniary limit is not prescribed, and I can recall most difficult questions of the law of inheritance and the law of contract being decided by a single Judge. What makes the matter still more obnoxious is that the right to appeal to a Bench of two Judges in My Province depends upon the Certificate which the deciding Judge has to give over his own judgment that it is a right case to be heard by two Judges. I should do away with this power altogether.

*Chairman:* I did not know that. That is a very important point. I think there is only one advantage in having a single Judge. That is that you cannot have a disagreement! But I do not know of any advantage beyond that.

*Mr. Jayakar:* It has caused a considerable amount of dissatisfaction among suitors; and if it is the aim of British Justice to create confidence, that must be changed.

Another point I want to touch upon here is somewhat controversial. I should like the question to be very carefully examined, which was started by Sir Tej Bahadur Sapru, as regards the relations between the Central Government and the High Court.

*(The Committee adjourned at 4-26 p.m.)*

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PROCEEDINGS OF THE FORTY-SECOND MEETING OF THE FEDERAL STRUCTURE COMMITTEE, HELD ON THE 27TH OCTOBER, 1931, AT 11-0 A.M.

## HEAD 8.

### THE FEDERAL COURT—(concluded).

*Mr. Jayakar:* Lord Chancellor, Before I resume the discussion of the question at the point where I left off last night, there is one matter which I omitted to mention in the course of my speech yesterday, namely, appeals from the Federal Court to the Privy Council in federal matters. I have dealt with the question as regards non-federal matters; but, as regards federal matters, I am of opinion that the appeal to the Privy Council should be maintained for some time to come, especially as questions relating to minorities' and other fundamental rights granted by the constitution may come up frequently during the next ten years after India

has a Federation. I would give as a matter of course an appeal to the Privy Council in all cases decided by the Federal Court in its maritime and admiralty jurisdiction; and I think it would be advisable to repeat in our constitution provisions like those which are to be found in the South African Constitution in Section 106. I think that would be advisable having regard to the fact that our maritime and admiralty jurisdiction is still in its infancy. In all other matters, I agree with Sir Tej Bahadur Sapru and Sir Muhammad Shafi, that where the Federal Court certifies that the question is one which ought to be determined by His Majesty in Council, an appeal may lie to the Privy Council; and I think it would be advisable to repeat Clause 2 of Section 74 of the Australian Constitution, which, with your permission, I will read:—

“The High Court may certify, if satisfied that, for any special reason, the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.”

I think it would be advisable to leave this question to the unfettered discretion of the Federal Court, without stating any limits either as regards the quantum of property or the nature of the question involved in the litigation. It might be that the quantum was small but that the point was very important, and *vice versa*. I should therefore leave it entirely to the discretion of the Federal Court to grant a Certificate; and, in such cases, an appeal may lie to the Privy Council. This is apart from the special Prerogative of the Crown to admit appeals by special leave, or as a matter of right under Orders in Council. I am not at the present moment referring to that jurisdiction because I referred to it yesterday.

I will now continue with the point which I left half-finished yesterday, namely, connecting the Provincial High Courts with the Central Government. I am aware that the question is extremely controversial, and it is not unlikely that there are some communal aspects of it which may evoke communal controversy; but I wish that the question should be discussed absolutely in a dispassionate way, because it has occupied the attention of British Indian Courts for some time. I may mention, as a matter of history, that when the Statutory Commission went out to India under the presidency of Sir John Simon, this question was directly raised by some Provincial High Courts, and it engrossed so much attention, especially amongst the commercial community in India, that a representative body of commercial men, called the Associated Chambers of Commerce for India and Ceylon, submitted a memorandum to that Commission advocating that the Provincial High Courts might be linked up with the Central Government. Unfortunately I have not a copy of that memorandum here, so I cannot refer to it; but I will mention one or two anomalies which have got to be attended to in the consideration of this question. The position of the Provincial High Court is somewhat peculiar. For instance, the High Court Judges are appointed by His Majesty the King in England. Additional Judges are appointed by the Governor-

General in Council. The terms of the appointment are regulated by rules which are made by the Secretary of State for India. Thus the High Courts are connected with His Majesty, the Secretary of State, and the Central Government. Curiously enough, they also maintain another tie with the Provincial Governments. Just to mention a few details, in administrative matters affecting the High Court, the Home Department of the Local Government is supreme. In important matters directly affecting the High Court, it is the Governor of the Province who attends personally to this portfolio. Lastly, to complete the anomalies, financial matters affecting the High Court are looked after by the Finance Department of the Provincial Government. You see the anomalies there: the High Court Judges hold their appointment from the King; their terms of service are regulated by the Secretary of State; and in the day-to-day administration of the High Court, on important questions like finance and other matters, they are subject to the jurisdiction of the Local Government in three different Departments. Sir Tej Bahadur Sapru asks me to point out that, under Section 105 of the Government of India Act, Clause 2, temporary Judges are appointed by the Local Governments. The Section reads as follows:—

“ On the occurrence of a vacancy in the office of any other Judge of the High Court, or during any absence of any such Judge, or on the appointment of any such Judge to act as Chief Justice, the Governor-General in Council in the case of the High Court at Calcutta, and the Local Government in other cases, may appoint a person, with such qualifications as are required in persons, to be appointed in the High Court.. to act as a Judge of the Court.”

That adds one more anomaly to the list which I have submitted. I submit, therefore, that this question requires to be very carefully examined. I know there are difficulties on both sides, some of which were pointed out by Dr. Shafa'at Ahmad Khan in his speech; but the question has agitated the mind of the Provincial High Courts for a long time. I may be permitted to quote just two paragraphs from a Memorandum which was submitted to the Simon Commission by one of the Provincial High Courts, which shall be nameless during this discussion. It sets out the case very clearly, and I will just read an extract:—

“ It has always been a cardinal principle of the administration of British Justice that the Courts should as far as possible be kept aloof from political strife and exigencies. When the Reforms are extended in British India, there will probably arise many questions of importance affecting the constitution and the rights and liberties of the people which will require determination by the highest tribunals of the land. Political parties or political leaders may bring their disputes before the Courts of law, and the decisions of the Courts may not be liked by them. It is essential to the independence and impartial administration of justice that

the judicial department should be removed from the influence of the Legislative Council and should not be subjected to attacks by its members. Whatever measures may be designed to secure that the distinction between the administrative and judicial functions of the Judges should not be confused, and that the Judges should not be hampered in the latter by their executive subordination to Local Government or the Council, there are indications of the danger of their judicial functions being indirectly hampered by purely party considerations if further powers are granted to the Legislative Council over the judicial department."

Now, this is very important:—

"The Judges consider that it is of the utmost importance that steps should be taken at this stage to secure that the Courts shall not in any way be subject to party influence, political or personal. Powers of appointment, in particular, are liable to affect the independence and efficiency of the judiciary. It will be admitted that a Judge whose appointment rests not upon his technical qualifications but upon political or party considerations cannot be wholly independent in the discharge of his judicial duties; and he is apt to mould his views to suit the wishes or the policy of the party or the persons to whom he owes his office. Financial pressure may also be used to indicate displeasure with the independence of the judiciary."

I cannot do better than quote these two passages, which sum up the argument for the centralisation of this particular department. I have no dogmatic views on the matter; all I say is that this question should be examined very carefully in a dispassionate way. I am aware of the difficulty, which was pointed out by previous speakers, that either you have to transfer the administrative and financial part of the question entirely to the Central Government, or you repeat the anomalies under which the Calcutta High Court works at the present moment, where the financial connection is with the Provincial Government and the administrative control with the Central Government. My plea is that the question should be more carefully examined, because I hold the view, which is based upon the experience of the High Court to which I belong, that from very nearness and vicinity many questions assume a somewhat bitter character. An argument was adduced by a previous speaker that the same thing would happen if you transferred the High Court to the Central Government; but I think it would be so to a much lesser extent, because it is a case eminently coming under the principle that familiarity breeds contempt. If you transfer these Courts to the Central Governments, local influences to that extent will cease to operate. Controversies which assume bitterness owing to their communal or other character, if they are located in a small area are always more bitter than if they are spread over the whole of the country. I am therefore making out a plea that this question should be dispassionately

examined in the light of all the material which is available on this question. That finishes the third question relating to the present High Courts.

Reference has been made to the question of the age limit. I think the age limit can very safely be raised to 65. I am aware of many cases where very qualified and eminent Judges have been lost to the High Court owing to the rule that they have to retire at 60. I know that, in the climate of India, somnolent habits may be induced after 60 on the part of people who sit on the bench, but I think those are exceptional cases. On the whole, I think the age can certainly be raised to 65. I think 70 would be a little too old. I suggest 65 years of age for compulsory retirement from the Supreme Court.

Then there is only one point I would like to touch upon before I finish this part. That is the point which was raised by Mr. Zafrullah Khan. It is a very important question about which I have some difficulties. He said that matters, however small, in which question of a law being *ultra vires* are raised in the lowest Court, should be taken at once to the higher Court without passing through the intermediate stage. I have some difficulty about accepting this principle. The difficulty which I feel is this. At this stage, the plea which is raised of *ultra vires* can only be accepted on the pleadings, because it cannot be gone into. If the Court has no jurisdiction to hear that particular case, you cannot give it jurisdiction by consent. Therefore you have got to take the plea on the state of the pleadings as they are disclosed at that stage. I have some experience of such pleas, because in Bombay we have legislation which bars, either completely or in a modified way, the jurisdiction of Municipal Courts. It just occurs to me to mention one instance. We have an Act in India which deals with cases in which agriculturists are parties. An agriculturist is defined as a man who earns his living by agriculture, or whose agricultural income is more than his non-agricultural income. Such cases cannot be tried in the ordinary way by the High Court. I know it is a wholesome provision, but very often it leads to dilatory tactics; because, if a suitor is not able to pay, all he has to do is to advise his Counsel to put in his written statement a plea that this Court has no jurisdiction to try the case because the defendant is an agriculturist. Owing to the fact that the Court is unable, at that stage, to go into the merits of the case, the result very often is that it holds up the litigation. The difficulty is that, at this stage, you cannot go into the full merits of such a contention; you have got to take it from the pleadings or on a certain amount of *prima facie* evidence in the case. Therefore, I believe that the result of the suggestion made by Mr. Zafrullah Khan would be that, in the hands of unscrupulous clients, and unscrupulous Counsel too, it would be used as a dilatory device for postponing the final day of judgment. I submit, in that case, the proposal made by Sir Tej Bahadur Sapru is sounder, namely, that a case may be stated for the consideration of the highest tribunal, and

then the highest tribunal may be called upon to deliver its opinion on the reference. That, I think, would be a far more useful way of dealing with this difficulty. Secondly, Sir, the proposal made by Mr. Zafrullah Khan only saves one Court. His proposal was that, instead of the Munsiff or the lowest subordinate Judge trying the case, it should be tried by the District Court. Well, that only saves one Court, because the immediate Court higher than the Munsiff would be the District Court.

*Mr. Zafrullah Khan:* And also the single Judge hearing in the High Court; it would save that appeal.

*Mr. Jayakar:* I am in complete agreement with that part of your proposal. I am dealing now with the other one. Therefore, I think, if you really want to save unnecessary litigation and time, the better plan would be to have some provision under which a case may be stated and brought up before the highest tribunal immediately. Of course, that will also lead to dilatory tactics; but that is unavoidable to a certain extent. As you pointed out, Sir, another difficulty is that the determination of this question may depend upon facts. Some Court has to ascertain the facts upon which very often will depend the point of *ultra vires* or anything that arises of that nature. Therefore, my submission is that the proposal made by Sir Tej Bahadur Sapru is more acceptable.

One point, I understand, caused considerable misapprehension in my speech of yesterday. I was told that I was not quite clear as regards the jurisdiction of the Privy Council in non-federal matters. Well, what I wish to say—I do not know whether I was clear yesterday—is that I am quite aware that it is desirable to give to the Federal Court, in non-federal matters, an appellate jurisdiction. My point was this, that if the States could to-day play up and agree to the exercise of such a jurisdiction over their courts, in non-federal matters, by the Federal Court, I would have no objection at all; in fact, I would begin, as I said yesterday, by giving to the Federal Legislature power in the constitution to invest the Federal Court with appellate character in non-federal matters. All that I wished to point out was that, until the States have made up their minds to agree to this right of appeal being given to the Federal Court in non-federal matters, the possibility is that the Court will confine its appellate character only to British India; and my point was that the result of that will be that your Federal Court will split into two sections, which will gradually go on drifting from each other. You will develop one side of it which is a purely appellate court dealing with British India, and the other of a federal character. Necessarily the group of questions which come up before the Supreme Court—namely, the appellate part of it dealing with non-federal questions from British India—will absorb more and more attention and will become more and more popular; and my fear is that it will swamp, in certain cases, the federal part of that Court. But if to-day the States could be induced in some way to come up and give this appellate jurisdiction to the Federal Court in non-

federal matters, I am entirely in agreement with the proposal that we should give to this Federal Court another side—namely, the Supreme Court side dealing with appellate questions from all India, from all the Provincial and State Units, in connection with non-federal appeals.

There is one more point, with which I shall conclude, Sir, and that is as regards the criminal jurisdiction of an appellate character. I think I omitted to mention that point; and my opinion there is that in all criminal cases there should be an appeal to the Federal Court under some provision which may be made analogous to what you used to call in your country "Crown cases reserved", by a kind of certificate given either by the High Court or by the Advocate-General or the Attorney-General (we call him the Advocate-General in our country); and in all cases where the Court or Advocate-General is of opinion that a point of sufficient importance arises, such cases may be heard in appeal by the Federal Court in criminal jurisdiction. Of course, my acquaintance with the Crown cases reserved is somewhat old; I have not refreshed my knowledge of that subject since my student days; but some procedure analogous to that might be provided for, and in those cases where the High Court or Advocate-General certifies that cases are fit to be tried in appeal by the Federal Court, such cases might be tried by that Court.

I have nothing more to say.

*Chairman:* With regard to Crown cases reserved, they are very seldom reserved now-a-days since the passing of our Criminal Appeal Act, although there is still power to do so. The Criminal Appeal Act gives the same sort of power now that the Crown cases reserved had. But there is only one point in addition to what you have said. In addition to the Advocate-General—that is the Attorney-General—the Judge who is trying the case can state a case for criminal appeal. I have done it myself four or five times.

*Mr. Jayakar:* That may be done.

*Mr. Jinnah:* Sir, the question which we have to approach is one which must be approached from a very different point of view than it has been in the past. I do not think it is going to help us very much to examine this question in the light of various enquiries that have been made in the past, for the simple reason that we are proceeding now on the basis of all-India Federation. As you know, so far as we have proceeded, it still remains a little sketchy, and whether it is going to materialise or not is still an open question; but if you look at it on the hypothesis of the all-India Federation, so far as we have proceeded, then we are face to face with three questions. The first is, so far as the federal matters are concerned, should those matters vest in the Federal Court? Now, I will not take up the time of this Committee with this question—namely, that any question that relates to the Federal Constitution or arises out of the Federal Constitution should vest in the Federal Court—and I shall categorically answer the questionnaire on those points. But there is a difficulty that presents itself to



me when you come to discuss the vesting of the jurisdiction in the Federal Court with regard to federal laws. When we talk of federal laws, it is somewhat difficult to understand what are the federal laws so far as we have proceeded with the federal subjects. I find here in front of me a list—it is a pretty long list—where the cases will arise. Take, for instance, the railways. Any laws affecting the railways or any offences or any civil cases arising with regard to transactions in the transport system, and so on—I have got a very long list in front of me—will all those cases be federal laws or not?

*Chairman:* Might I just ask you a question? What is your practice in India with regard to through rates on railways? For instance, supposing a trader wants a through rate—I am not so familiar with the Indian railways as I am with the English—a through rate, we will say, from town A to town B, which goes over three different systems of railways. Is there any tribunal that he can go to which will enable him to get a through rate, or will enable him to say that the through rate which they charge is excessive?

*Mr. Jinnah:* No, there is no tribunal that he could go to. It is purely an administrative matter.

*Sir Tej Bahadur Sapru:* No, there is the Railway Rates Tribunal.

*Mr. Iyengar:* That is an advisory body.

*Mr. Jinnah:* It is not a tribunal at all. There is no tribunal. That is entirely an administrative matter. You have got to deal with the Railway Companies. There is no enquiry about it. There is no evidence. There is no rate ascertained at all. It is really a matter of business transaction pure and simple. There is no tribunal of a judicial character.

But that was not what I was thinking of. Take, for instance, offences under the Railway Act. I send my goods from Bombay to Calcutta, and my goods are damaged. Well, I have a remedy against the Railway Company. I file a suit under the Railway Act. Well, that is federal law. Not only that, but we have not yet ascertained what will happen to the other laws, such as the Transfer of Property Act, the Civil Procedure Code, and numerous Statutes which are all-India Statutes. What will happen to those Statutes? Where will you go with regard to those cases? Which Court will you go to? Take, for instance, the criminal law, the Penal Code and many criminal Statutes. Where will you go with your all-India Statutes? Therefore, it seems to me, Sir, that it has been assumed all along that the Federal Court will be vested with jurisdiction, not only relating to the constitution or matters or disputes arising out of the constitution, but also relating to federal laws.

*Sir Maneckjee Dadabhoj:* If they are not federal Statutes, will not the ordinary Court have jurisdiction?

*Mr. Jinnah* : Yes; but it is assumed—I took it from the opening speech of Sir Muhammad Shafi, and you have proceeded on this basis—that the Federal Court must be vested first with the jurisdiction to deal with matters relating to the constitution and matters arising out of the constitution; the Federal Court should have exclusive appellate jurisdiction with regard to all federal laws; further, that the Federal Court should take the place of the Privy Council, except that the Privy Council should have the privilege of granting special leave, and, lastly, that it also should assume criminal jurisdiction. What I was pointing out was this. We must try to separate these four points. I have no difficulty in understanding this part, that the Federal Court must be vested with jurisdiction to deal with matters relating to the constitution and arising out of the constitution; but when you come to vest your Federal Court with a jurisdiction with regard to federal laws, then it presents to me an enormous difficulty. Further, apart from the difficulty I have mentioned, are the Indian Princes and the States agreeable, so far as their States are concerned, that, for any questions relating to federal laws which may arise, the Federal Court should be the Supreme Court? I say that you will have very nearly 50 per cent. of cases which will arise out of federal laws.

Then, I do not see what you are going to do with the other laws. So far we have been trying to classify them as Central subjects. What will you do with them? Then, we go a little further. Another difficulty presents itself to me, namely, that when your Federal Legislature is set up—and we will take it that the Civil Procedure Code is not Federal law so far as we have proceeded in classifying the subjects—supposing your Federal Legislature, when it is set up, makes an amendment in the Civil Procedure Code, will it become federal law?

*Sir Tej Bahadur Sapru* : It all depends on what you mean by federal law. What do you mean by federal law?

*Mr. Jinnah* : That is what I want to know from you, because you said that federal laws must be vested in the Federal Court.

*Mr. Jayakar* : Appellate jurisdiction.

*Mr. Jinnah* : Yes, of course; it cannot be original jurisdiction. What do you mean by federal laws? That is what I am trying to examine. There are certain laws, as you have classified them now, under the heading of federal subjects. There is no question that they are federal laws. I find this difficulty. What will happen when your Federal Legislature is set up and undertakes an amendment of that particular Statute? Take the Transfer of Property Act. Take the Civil Procedure Code.

*Sir Tej Bahadur Sapru* : That will not be federal law.

*Mr. Jinnah* : Where will it be?

*Sir Tej Bahadur Sapru* : Under a Central subject—unless you abolish the distinction between Central and Federal.

*Mr. Jinnah :* It seems to me, if you are putting the subjects in this difficult position, that you are leaving out a large body of cases which will arise out of these various Statutes which you have called Central laws or Central subjects, and with regard to which the final Court of Appeal in India would be the High Court or High Courts, and the appeal would lie to the Privy Council.

*Sir Tej Bahadur Sapru :* No, no.

*Mr. Jinnah :* Where will it go?

*Sir Tej Bahadur Sapru :* It will go to the Supreme Court, in the exercise of its jurisdiction on non-federal matters.

*Mr. Jinnah :* I am talking of non-federal matters.

*Sir Tej Bahadur Sapru :* So am I.

*Mr. Jinnah :* Where will it go?

*Sir Tej Bahadur Sapru :* To the same Court on the Supreme Court side—the non-federal side.

*Mr. Jinnah :* In that case, you want to vest your Federal Court with jurisdiction with regard to the constitution, federal laws, and appeal against the High Courts, in the place of the Privy Council?

*Sir Tej Bahadur Sapru :* That was the suggestion.

*Mr. Jinnah :* And criminal appeals?

*Sir Tej Bahadur Sapru :* In a very modified manner.

*Mr. Jinnah :* It seems to me, then, that you at once create this difficulty. What about the cost? Who is going to pay the cost? There are certain Units, such as the Indian States—they are not going to submit to the appellate jurisdiction of your Federal Court *qua* matters other than those arising out of the constitution or federal laws. That is the first point. If you say the costs are to be apportioned, remember that it will be a very big Court. It will not be a small Court. It will be a very expensive Court and the question of cost will arise.

*Sir Maneckjee Dadabhoj :* The cost of maintenance of the Court?

*Mr. Jinnah :* Yes. The next question is this. Is it really not a difficult thing to work, when you have a Federal Appellate Court, having the jurisdiction that you suggest, to which one third of India does not submit? It seems to me that it is bristling with difficulties. Personally, I have no hesitation in saying that I have always been a supporter of the Supreme Court, and I have always maintained that it is high time that we had a Supreme Court in British India. The question has been debated more than once since 1921, and even before that it was discussed, and we pressed in the Legislature more than once that a Supreme Court should be established; but then we were contemplating a very different state of things; we were then confining our attention only to British India, and the question did not present itself in that difficult aspect which it now bears.

My suggestion, therefore, is this. You have given us a conundrum, and that conundrum is to try to materialise an all India Federation. This is a corollary of that conundrum, and therefore my suggestion is this. You may be startled when I say that you have to divide this thing into three parts, and keep them separate. I would suggest that we should start with the Federal Court on the hypothesis that we have solved this conundrum of all-India Federation, and confine ourselves to giving jurisdiction to the Federal Court only in matters relating to the constitution and arising out of the constitution. The personnel of the Court will be qualified in those constitutional matters as constitutional lawyers, because the questions dealt with will arise, as we have contemplated, between the Federation and the Units and between the Units *inter se*. Further, I maintain, Sir, that it should be open to any subject, if his right is invaded or attacked—relating to the constitution, of course, or arising out of the constitution—to go to the Federal Court direct.

Here I might mention the subject which was discussed with regard to the invasion of the rights of any interests or of any community or of any class—relating, of course, to the constitution or arising out of the constitution. The constitution will be a Statute; and if any right is invaded or attacked or infringed by anybody, it should be open to the subject to go to the Federal Court.

*Chairman*: You would include in that, I suppose, any case where there was a commercial or religious discrimination?

*Mr. Jinnah*: Yes; and here I would observe that I do not think any useful purpose would be served by getting an agency to refer the matter to the Federal Court. If my right is invaded or infringed, I would suggest—the suggestion has already been made, and I have no special objection to that at all—that if two-thirds of the members belonging to that interest or class or community object, then that measure ought to be suspended forthwith; and it would then be open to one or two persons belonging to that class or community or interest at once to file a suit, and a limit of a month or two months could be fixed for that purpose. Let any subject who is affected file a representative suit, and let that question be decided by the Federal Court forthwith.

*Mr. Jayakar*: Even before the Bill has become an Act?

*Mr. Jinnah*: Yes.

*Mr. Iyengar*: You would file a suit—what for?

*Mr. Jinnah*: That is *ultra vires*.

*Mr. Iyengar*: How can it be *ultra vires* before it has become an Act?

*Mr. Jinnah*: If a Bill is introduced, and if a member of any community says that it violates the fundamental principles of the constitution, and therefore it should not be proceeded with, what is the position? For instance, a Bill may be against a religious usage or religious practice, or infringe somebody's religion. The

Bill is introduced. The particular class affected object to the Bill on the ground that it infringes their religion or religious practice or usage, and that therefore the Legislature has no power to enact this measure. Now, do you want to wait until the Bill becomes an Act? I say "No". Then, it is suggested that somebody else should be constituted the agency to make a reference to the Court. I say "No". It is my right, and my right is going to be infringed or invaded. I say that Bill is bad *ab initio*, because it infringes fundamental rights, and I say that Bill ought to be suspended; but, in order to show that the objection is not a frivolous one, you can ask for a majority of two-thirds of the community affected. That gives you evidence that serious objection is taken to it and the objection is not merely a frivolous one.

*Mr. Iyengar*: But that may be a political vote, and not a vote on the merits.

*Mr. Jinnah*: It may be anything. You will never get perfection, and you are now asking for perfection. I say that if two-thirds of the members of a community in the Legislature seriously in their representative capacity, assert that this Bill infringes their religion or their religious usage, then that is a *bonâ fide* objection, and I am satisfied; and, that being so, I say that that Bill ought to be suspended in order to give them an opportunity to test the question before the highest tribunal. You can say that, within two months or three months, if you like.

*Mr. Jayakar*: But the trouble may be unnecessary, because the Legislature may not pass that Bill.

*Dr. Ambedkar*: Or it may emerge in a form to which there is no objection.

*Mr. Jinnah*: Pardon me, Mr. Jayakar, in that case the Government of the day, when the objection is raised, will probably try their very best to meet the objection. This is when everything has failed. You have been in the Legislature, and we know something also of the ways of Governments. The Government do not allow an *impasse* to arise unless there is no other course left open to them. If you were the Prime Minister and that objection was raised, your Government would try to meet that objection.

*Sir Tej Bahadur Sapru*: At what stage, therefore, will you give this right against an offending Bill? After the Government has tried all measures?

*Mr. Jinnah*: At the stage when the Government decided to proceed with that Bill.

*Mr. Iyengar*: Suppose a two-thirds majority of a community, though it may be a minority community, is determined to obstruct all Government measures, and in every case obstructs Bills in this way, alleging that they raise communal or religious issues, what happens?

*Mr. Jinnah*: You are attributing to people intentions. . . .

*Mr. Iyengar*: I think I am attributing political strategy.

*Mr. Jinnah:* If you think that people are so wicked, you had better retire from making any constitution.

*Mr. Iyengar:* You and I obstructed financial Bills, you know.

*Mr. Jinnah:* Excuse me; I did not. You did.

*Mr. Iyengar:* You voted against supplies.

*Mr. Jinnah:* I did not.

*Mr. Iyengar:* You did.

*Chairman:* Let us let bygones be by gones. We are legislating for the future.

*Mr. Jinnah:* I think Mr. Iyengar has got a night-mare. Because he has done nothing else but obstruct in the Legislature—and he always did that because that was his policy—therefore he cannot get over the idea that everybody else would do the same thing. Let us hope that, in your future constitution, people will be responsible people, that people will not, merely for the sake of opposition, raise difficulties. If that is the spirit in which you are going to work, then, of course, no constitution will work however perfect you make it.

*Sir Tej Bahadur Sapru:* Mr. Jinnah, will you just permit me to call your attention to one thing? Perhaps you might express your opinion on the procedure which was followed in India itself, when the Supreme Court existed, of registering the Statutes of the Governor-General in the Supreme Court. Would not that practice be better? In the time of the East India Company, when the Supreme Court existed, the Statutes passed by the Governor-General were registered.

*Mr. Iyengar:* For a few years.

*Sir Tej Bahadur Sapru:* They were registered in the Supreme Court, and unless they were registered they were not of any binding force.

*Mr. Jinnah:* I am assuming now that people will not raise any factious, frivolous objections. I am now assuming that you have got two-thirds of the members of a community or class who really feel that a particular Bill infringes their rights. When I say rights, I mean a limited kind of rights—I do not mean every right—I do not mean every Bill. If there is going to be a frivolous objection, Mr. Iyengar, supposing you bring in a Transfer of Property Act amendment, and if you think that the Hindus will rise in a body and say it is going to affect their religion, as they did in the last Legislature—

*Mr. Iyengar:* Many pieces of legislation were treated as communal in the last Legislative Assembly.

*Mr. Jinnah:* I am just giving you the answer. Supposing the Hindus in a body—two-thirds of them—say it affects their religion, I am prepared, if I have anything to do with it, to say to them: Very well, I accept your two-thirds majority; it is sufficient for me. What is going to happen? Under the Statute, you have got

one month within which you can file the suit and get the decision of the tribunal. Whatever that decision is, of course it will be followed. Supposing a few months are lost, it is only a question of a few months, not a question of years or centuries. I think you are young enough and you will be able to pass many measures if you are there. However, it really comes to this. Why allow the measure to proceed further and become law, and then start the ball rolling? The only difference is, are you going to start the ball rolling after or before? It cannot be urged that there will be a great deal of waste of time, because, as I say, you must fix a limit. The suit must be filed, say, within one month. After all, your Supreme Court, if you are going to follow the suggestions which I make, should be vested only with the jurisdiction arising out of or relating to the constitution. It will not be so overworked, and therefore the cases can be expeditiously disposed of. I say that seems to me the only satisfactory method. I will finish with that, I do not want to take up more time.

*Mr. Joshi:* You propose to give this right of appeal to two-thirds of the members?

*Mr. Jinnah:* It is not a right of appeal: it is a right of exclusive jurisdiction.

*Mr. Joshi:* To two-thirds of the members of the community? Do you wish to confine this right to religious communities, or would you extend it also to economic communities?

*Mr. Jinnah:* I said that if there is any measure which infringes any provision of the constitution—which includes fundamental rights and many other things—if it infringes any provision of the constitution which affects any subject or any community or any class, and if an objection is raised, by at least a majority of two-thirds, that it affects their particular right under the constitution, that measure ought to be suspended, and within one month that party or a member of that party or community should be entitled to file an action.

*Mr. Joshi:* Now I will give you an instance. I will tell you what point I am making. Supposing the fundamental rights define that there shall be no discrimination against classes—that no legislation which discriminates between classes shall be passed, or no legislation which discriminates against sex should be passed. Now, if a Bill introduces some clause which discriminates between sexes or between economic classes, those classes may not be represented in the Legislature. Under those circumstances, do you provide any measure?

*Mr. Jinnah:* I said “Yes”. In that case, when the measure is passed.

*Mr. Joshi:* No, in the Bill form, when the measure is in the form of a Bill.

*Mr. Jinnah:* If there is nobody to raise the objection, then how can you decide it?

*Mr. Joshi:* Yes, but what protection do you propose to give them?

*Mr. Jinnah:* The protection I propose to give those who are not there to raise the objection is the protection that you have as a matter of right to challenge that Statute in a Court of Law as infringing your rights.

*Sir Maneckjee Dadabhoy:* But, in case of discriminatory legislation, would you not allow that right to be given to other members who are not of the same class?

*Mr. Joshi:* Why not, therefore, give that right to anyone affected? There may be a discrimination against women and there may not be women members. Why not, therefore, give the right to anyone whose interests are affected?

*Mr. Jayakar:* That would mean that one person could block legislation.

*Mr. Joshi:* No; if the class which is affected is not represented in the Legislature, you must provide for their protection.

*Mr. Jayakar:* After it becomes an Act.

*Mr. Joshi:* Why give greater facilities to those classes which are represented in the Legislature?

*Dr. Ambedkar:* They will have a double remedy, because they will have the remedy of blocking the Bill as such.

*Mr. Joshi:* They will have the remedy of being represented in the Legislature and blocking legislation, and you give them a further right; but to those people who are not represented in the Legislature, you give practically no remedy.

*Mr. Jayakar:* There must be a two-thirds majority. Therefore, *ex-hypothesi* it can only apply to those interests which have got a group in the Legislature.

*Mr. Joshi:* My point is that, as Mr. Jinnah is proposing to give certain protection to those classes which will be represented in the Legislature, whether he proposes to give to those classes which require greater protection a similar power to block Bills when their interests are affected.

*Mr. Jayakar:* If you give similar protection to those classes, it must come to this, that one or two members of the Legislature may be able to block a Bill.

*Mr. Joshi:* I am not thinking of one or two members. There may be a class for which there may be no member, and then any one man should be able to act.

*Sardar Ujjal Singh:* What classes have you in mind?

*Mr. Joshi:* I have in mind women and workers. They may not get elected; and how can you define a worker? How will you define a member as belonging to the working class unless there is a special constituency for the workers? Any member who gets in for a general constituency cannot be defined as a worker. A member can be defined according to his religion, as a Hindu, a Mussalman



and so on, but you cannot define a member as a working-class member unless there is a special representation for the workers.

*Sardar Ujjal Singh*: Labour would be represented in every constituency.

*Mr. Joshi*: Labour would be represented through general constituencies, but such a member need not necessarily be a worker. I am therefore asking whether those people who require greater protection should not have the same power to block Bills as those classes of people who will be better represented will have. In my judgment, those classes require better protection.

*Chairman*: Are you suggesting that a Trade Union should have the right to block a Bill?

*Mr. Joshi*: Yes, Sir. My point is that those classes which require greater protection should have those rights before those classes which are represented in the Legislature.

*Dr. Ambedkar*: There is just one more thing I should like to ask you. After this procedure is over—I mean, a two-thirds majority raising an objection, and one or two members going to a Court of law to see whether it infringes any religious practice, and the High Court or the Federal Court gives the decision that it does not, and the Bill is proceeded with and becomes an Act—would you thereafter agree to a right for any single individual member, whose religious practice or liberty was affected, to come in and challenge our Act and say it was *ultra vires*?

*Mr. Jinnah*: No, it would be *res judicata*. The question is decided. It went to the Court, and the Court held that the Bill was not *ultra vires*. Therefore it is *res judicata*. You cannot go on litigating.

*Mr. Jayakar*: The subject matter is different. One was a Bill and the other would be an Act.

*Mr. Jinnah*: Mr. Jayakar, I think, if you were a Judge of the Supreme Court, you would dismiss that suit in five minutes.

*Mr. Jayakar*: I do not know.

*Dr. Ambedkar*: Members would take an objection in the form in which it is. Would the members of the community, who were not in the Legislative Council, have the right to go to law?

*Mr. Jinnah*: Oh, yes, if no objection is taken. If they are all sleeping and the Bill becomes law, if it is *ultra vires*, it is still *ultra vires*; and you can go to the Court and have it declared *ultra vires*.

*Mr. Joshi*: They get less jurisdiction.

*Mr. Jinnah*: I was answering Dr. Ambedkar's question. As to your question, Mr. Joshi, I think it is impossible to meet you. That is all I can say.

Then, Sir, I said that therefore I would confine the jurisdiction of the Federal Court only to those matters which related to the constitution and those matters which arise out of the constitution;

but I have a greater ambition than that, and I do not stop at that. I most respectfully make my submission to this Committee to consider the other two questions separately—that is the appellate civil jurisdiction and the criminal jurisdiction. I said that, if you separate your Federal Court, and if you will, in making the appointments, select the personnel of that Court which will be specially qualified in matters arising out of the constitution, you will then, I think, set up a Court which will be the most desirable Court. We know, Sir, that this is an age of specialists. In India we have not yet risen to that height. You will be surprised to hear—and I think my friends here will bear me out—that in India, in the morning, you are arguing a complicated question of Hindu law, and, in the afternoon, you are dealing with a case of light and air and easements, and perhaps the next day you are dealing with a case of a commercial kind, and a third day, perhaps, you are dealing with a divorce action, and a fourth day you are dealing with an admiralty action.

*Chairman:* Have you not specialised people for admiralty work, say, and special people for divorce?

*Mr. Jinnah:* No. Of course, our system is different. You have here in this country people that specialise. You have got the Chancery Division, you have got the King's Bench Division, Provate Admiralty, Divorce and so on. You have got a special Bar for special laws.

*Chairman:* Yes—patents, railways and so on.

*Mr. Jinnah:* Patents and Income-tax and criminal law—various matters in which the Counsel are specialised. Therefore, what I was suggesting was this, that we should not lose sight of the fact that there is a very strong feeling in India for a Court of appellate jurisdiction which should take the place of the Privy Council—a very strong feeling—and that Court must come, and must be constituted. But constitute that Court, again, proceeding on the lines of specialisation. There we want men well versed in civil laws—the general civil laws—and you will therefore have to constitute that Court having regard to its requirements. I would suggest that you should have a Supreme Court having appellate jurisdiction over the Provincial High Courts. In other words, in one sentence, that Court should take the place of the Privy Council—namely, the appeals should lie under the same terms and conditions as the appeals lie now to the Privy Council from the various High Courts in India. It would not make any difference in the way of number or expenses, because, if you are going to jumble up everything in one Court, the work has got to be done, and you require a number of men to do the work—so whether you separate or whether you jumble up, I do not think you will save in cost or in the number of Judges. Therefore, I say, let us develop the idea of a separate Supreme Court having the same jurisdiction as the Privy Council has now, and, in the course of time, that Supreme Court may succeed in attracting the attention of the Indian States, and, in course of time—I hope sooner than many people think—many of

the Indian States may think it desirable that the appeals from their High Courts should be allowed to be filed before that Supreme Court. At present it can only be confined to British India, unless, of course, the States are willing to come in. Personally, I should welcome them if they were willing to come in; but, as far as I can see from the speeches that were made on behalf of the Indian States, they are not prepared to surrender their Courts to any Appeal Court in matters other than those affecting the federal constitution and the federal law. I say that, therefore, if you constitute the Supreme Court, it should be vested with the jurisdiction to deal with federal laws—not the constitution but federal laws—and have the civil appellate jurisdiction over the British India High Court.

*Sir Maneckjee Dadabhoy*: What about Mr. Jayakar's argument yesterday, that you cannot take away the right of an individual to appeal to the Privy Council? You want a man to go to the Supreme Court. Mr. Jayakar argued yesterday that the right to appeal to the Privy Council, which every individual has, cannot be taken away by any Statute or anything. He possesses that right.

*Mr. Jinnah*: Mr. Jayakar was quite right.

*Sir Maneckjee Dadabhoy*: I therefore want to understand your argument.

*Mr. Jinnah*: You are anticipating me; I was coming to that. Mr. Jayakar was quite right. When you have established your Supreme Court, such as I am trying to put before you, it will have the jurisdiction that the Privy Council has now; but it has nothing to do with the Prerogative of the Crown, you see, which it enjoys through the Privy Council or the Judicial Committee, to give special leave of appeal—that is to say, if your Supreme Court has decided the matter. If you want to go further, you can only do so, provided it gives a certificate to go to the Privy Council. If it refuses to give a certificate, nevertheless you cannot take away the Prerogative of the Crown to grant special leave in any given case.

*Mr. Joshi*: Will not a parliamentary Statute do that?

*Mr. Jinnah*: Yes. You can do anything by Statute, except bring about complete equality. I am not, therefore, suggesting at present that that Prerogative of the Crown should be taken away. At present I think it is desirable.

To proceed now to the third point, with regard to criminal jurisdiction. I firmly believe that in India we must have a regular criminal Court of Appeal, just as you have in England. Until we have that, I do not think we shall be able to satisfy the wants of India. This sort of compromise suggestion—namely, that in certain matters, when there is an error of law or something like that, you may go to the Supreme Court—I am afraid is not going to help us very much, because, as far as my experience goes in criminal cases, questions of law or of error are very few indeed. Generally, in criminal cases it is a question of fact and of appreciating evidence. There are many cases where I think the necessity of a criminal Court of Appeal is beyond doubt—just as you have here

a criminal Court of Appeal which is not confined merely to questions of law or of errors or of grave irregularities. I feel that India must have a criminal Court of Appeal. It is a question which requires very close examination. I quite agree with Mr. Zafrullah Khan that there is always an appeal to the Divisional Bench, but it is not always satisfactory. I think there ought to be a criminal Court of Appeal which will give more confidence to the people than does our present position. Let me tell you, Sir, that if there is anything in India which is the greatest bulwark of the Government, it is the criminal and civil administration of justice. I think myself that this is a question which requires very close examination. Therefore, I would say: let your Federal Court, so far as we have proceeded, confine itself only to that jurisdiction which I have mentioned; have your Supreme Court, and give it appellate jurisdiction and make it take the place of the Privy Council; and have your criminal Court of Appeal.

It was said that litigation will increase, and it was asked how many Judges will be required, and so on. It was stated that lawyers demand very heavy fees, and so forth. I think the members of this Committee do not quite realise that they are not dealing with Australia or with Canada. In Australia you have a population of four millions, and in Canada you have a population of ten or eleven millions. It does not seem to be realised that, when we are talking of India, we are talking of a country as big as Europe. Supposing you were to have one Federal Court for the whole of Europe, having jurisdiction vested in it of all the federal laws, all the constitutions, civil appellate jurisdiction and criminal jurisdiction—how many Judges would you require? It is no use, therefore, saying that you will require so many Judges, because that depends upon the size of the country and upon the requirements of the country. In India you have a vast continent. That is the reason why I say that in India it is more essential, just as in the United States of America, which is the nearest example I can give—there the Federal Court is vested with jurisdiction with regard to certain specified matters, particularly the constitution; and it has no appellate jurisdiction over the Courts of the States. The country is too vast. Therefore, I say that all these arguments about the cost and the increase in the number of Judges, and about litigation going up by leaps and bounds, are not convincing. With regard to the argument that litigation will increase if there is a Court nearer at hand, I am inclined to agree with that. No doubt there is difficulty in the way of litigants to-day in coming to the Privy Council, not only on the ground of excessive cost, but on the ground of the time it takes in getting instructions and on the grounds of the delay which is involved and also the inconvenience which is involved. To give one example, very recently a matter had to be considered here. Certain papers were not available, and it could not be definitely decided what steps should be taken until those papers were available. What does one have to do in such a case? You have to write to the clients somewhere in a remote corner of India—say Madras.

*A Member:* Madras is not a remote corner of India.

*Mr. Jinnah:* I took Madras because it is a four-day journey from Bombay to some parts of Madras, and it takes fourteen days from London to Bombay. That means eighteen days altogether. Then, when the people get the letter we must allow them some time in which to reply; and by the time you get the papers, two and a half or three months have gone. It is not, therefore, merely a question of cost, but of time, delay, and inconvenience. There is not the slightest doubt about that. Above all, Sir, I cannot understand why India should not aspire to its own Supreme Court. Why should India be the only exception that is permanently tied down to the Privy Council here? Other Dominions have got it. There can, therefore, be no question as to the necessity and as to the justice of this; and accordingly I say that we should have a Supreme Court. I am only prepared to agree to this separation in view of the idea of an all-India Federation, apart from which our task would have been much easier.

I think, Sir, that I have done with the question of the Federal Court so far as your questionnaire is concerned, and I will, if I may, now categorically answer the questionnaire.

The first question is:—

“Should members of the Federal Court be appointed by the Crown and on what tenure?”

I say “yes,” by the Crown, and during their good behaviour subject to the vote of the two Houses. I do not know exactly what “a case of proved misbehaviour” means; I have not been able to understand it. I suppose the Legislature, when it passes its vote—the two Houses of the Legislature—will not give reasons why it is convinced of the misbehaviour. I suppose the votes will be that they are dissatisfied; and I say that, on the vote of the two Houses, the Judges should be liable to be removed.

The second question is:—

“Should the Court have an original and an appellate jurisdiction, or only an appellate?”

My suggestion is that this Federal Court should have only original jurisdiction in matters relating to and arising out of the constitution, and a separate Court should be constituted, by the name of the Supreme Court, having appellate jurisdiction with regard to federal laws and appellate jurisdiction over the High Courts of the Provinces, hoping that the Indian States may, if not immediately, then in the course of time, come in, as will the Provinces. I say also that there should be a separate criminal Court of Appeal. I may qualify my statement here to this extent, that the Federal Court should be vested with jurisdiction relating to constitutional matters—matters arising out of the constitution and such other matters as may be specifically mentioned in the schedule. I mean, there are the matters such as you have referred to, Sir, in your memorandum.

The third question is:—

“ Should the Court have an exclusive original jurisdiction, *e.g.*, in the following matters? ”

I have dealt with that; my proposition covers that.

The fourth question I think my proposition has already covered.

The fifth question is:

“ Should provision be made for special references by the Governor-General to the Court as under Section 4 of the Judicial Committee Act, 1833? ”

I am not in favour of that, because I think the Courts are always reluctant to deal with abstract questions, and I do not think any useful purpose would be served. I think the Governor-General ought to rest content with such advice as he can get from his legal advisers, and act and exercise his powers, such as may be vested in him, instead of being allowed to refer abstract questions from time to time to a judicial tribunal. You will correct me, Sir, if I am wrong; but I think this power has been very seldom exercised in this country by the King.

*Chairman*: That is right.

*Mr. Jinnah*: It may have been exercised in those days for some special reason, and I am not acquainted with the history of it, as to how and why it was thought necessary; but I am not satisfied that we should follow that.

The sixth question is:—

“ Should there be a right of appeal from the Federal Court to the Privy Council as of right or by leave of the Court? ”

I say “ only by leave of the Court.” and the right of the Crown to grant special leave of appeal should be preserved in all cases.

The last question is:—

“ What provision should be made for the enforcement of the judgments of the Courts in the States and in the Provinces respectively? ”

On that question I will say this. In all disputes, so far as the Federal Government is concerned, and so far as the Units, whether they are States or whether they are Provinces, are concerned, we can only trust that, as all the Units have agreed to the setting up of the Federal Court, in the ordinary course its decisions will be respected and carried out. I think, as a matter of honour, they will be bound to respect them and to carry them out. If that is not possible in some cases however, and if, as Dr. Ambedkar pointed out, there is a conflict of a serious nature, which was so well illustrated by him, then I say that, so long as we proceed on the hypothesis that the defence of the Crown subjects lies ultimately with the Crown, the Crown must be in a position to enforce the decree or the warrant of the Federal Court.

I have now finished dealing with the questions which are more specifically before us, but many details have been raised and many extraneous matters have been introduced. The first is the suggestion that the High Courts should be centralised and that the Central Government should have control over the internal administration of the High Courts. It seems to me that, when one talks of decentralisation, when one emphasises the view that the Provinces should be autonomous, it is at once suggested or suspected that there is some communal design behind it. I am firmly convinced, with great respect to my friends who do not agree with me, that if you talk of Federation and of making your Provinces really autonomous and self-contained, and if you are going to proceed on that principle, then I say that all these arguments that if a High Court is near the Provincial Government it will be influenced and it will be affected and there will be debates in the Legislature—all this is useless. Are your Provinces to be autonomous Provinces? Are your Provinces fit for responsible government? Are your Provinces going to manage the Governments and are they capable of managing the Governments? Will you not be able to produce men who will show a better character than you are describing here when you say this will happen and that will happen? Are not you arguing against your own case when you talk like that? I say I leave the High Court to my Provincial Government. He who pays the piper must call the tune. Your Provincial Government is to foot the bill, and some member sitting in Delhi or Simla, or wherever he may be, a member of the Central Government, is to dictate to the High Court as to internal administration. Sir, I know in the past various suggestions have been put forward. I want my friends to get out of this rut of centralisation. Centralisation has been the policy—it has been the one definite line of the Government of India—for very different reasons, for very different objects. Do not fall into that error. Get out of this centralisation. I know how the Reports have been made by various committees. The Simon Commission Report was brought into requisition to aid in support of this argument. What does the Simon Commission Report say? Does it give you any responsibility at the Centre? What sort of constitution does it propose? Do get out of that rut. If you are thinking of your Federal Government under the Federal Constitution—responsibility at the Centre with autonomous Provinces—then, I say, I have not yet heard any argument except this argument of holding out that our people are so wicked that if the High Court is responsible to the Provincial Government there will be such communal rancour, there will be so much intrigue and wickedness, that it is better to take away this High Court from that atmosphere and put the High Court in an atmosphere a little more pure in the Centre. That is the only argument.

Then, Sir, there is the other question with regard to the Letters Patent appeals and additional Judges being appointed, and the provisions in the Government of India Act as to fixing the quota for the certain number of members of the Civil Service. All those matters do not strictly arise out of this question which we are at

present discussing; but I am in general agreement with Sir Tej Bahadur Sapru. I quite agree with him that this practice of appointing additional Judges is not desirable. I remember, in my High Court, recently knocking against about half a dozen Judges, who had been on the Bench, roaming about in the corridors of the High Court with briefs in their hands.

*Sir Tej Bahadur Sapru:* Or possibly without briefs!

*Mr. Jinnah:* It is demoralising to the Bench; it is demoralising to the profession. I think it is an undesirable practice. Once you appoint a Judge, let him remain there. It may be pressed on the ground of economy, but I think in the long run it does more harm. It may save a little money, but I think it can be better managed with a little manipulation. We have, in India, Judges going on leave very often, and, if it is manipulated properly, I think you can always have, instead of additional Judges, one or two permanent Judges who can always remain there, because somebody or other is always going on leave.

Then with regard to the qualifications of a High Court Judge, I am not against the Civil Service. I am not being carried away by any other consideration, except one, that I want, in my High Court, Judges of the highest capacity, honour and integrity. It is not the fault of the Civil Service; it is not the fault of the men at all. It is the fault of the system. No man on earth placed in the position in which they are in the Service, can ever qualify himself, unless he happens to be an exceptional genius; and we have undoubtedly known a few geniuses in the Civil Service on the High Court Bench. But, I say, unless a man is a genius, you do not give him a chance to qualify himself for this position and the work that is required of him. A young civilian comes—he is sent from pillar to post, from one district to another. He is in the executive, concerned with administration, and for a number of years he roams about. This is a fact—and I think any member of the Civil Service will bear me out—that when it is found that he is not much good for the administrative and executive work, he is shunted into the judiciary. It is the simplest way to do it. You do not know what to do with him, and so you put him on the Bench and make him a District Judge or an additional Sessions Judge. If he is there as an additional Sessions Judge or a District Judge—again, it is not his fault—what does he do, what class of case comes to him? Then you have got to comply with the provisions of the Statute, because you must have the requisite number of Civil Servants on the Bench. Well, then, you have got to select from these District Judges, and you make them High Court Judges. Well, when they are there the majority of them are like fish out of water, and you cannot expect anything else. Therefore, it is not that I have any bias or any prejudice or any particular ill-will against the Civil Service; but I say no—recruit the High Court Judges from the profession, because there you have a large body of men who go through the acid test of years of practice, and have risen, by dint of their industry and merits, in their profession, and



are fully qualified; and therefore you get a far better material for your High Court Judges.

Well, Sir, there are other matters which are purely matters of detail, and I do not wish to take up the time of the Committee. I have no doubt that those details will be considered later on by those who are better qualified to deal with them.

*Sir Purshotamdas Thakurdas:* Lord Chancellor, I can assure the Committee that I shall be very brief indeed. I should hardly have intervened in this debate, but the thought-provoking memorandum of His Highness of Bhopal, dated 13th January of this year, tempts me to deal with one point which is pertinent to this subject. The memorandum is published in the Federal Structure Committee's Report (Part I), at pages 290 and 291. In the fifth paragraph of that memorandum His Highness says that, barring Burma, it will be found that Indian States comprise 47 per cent. of the total area of India. He admits that, in population, the States are much lower in strength than British India, and he goes on to deal with the reasons for this disparity: and, after mentioning his reasons, His Highness says—and I will quote one sentence from his memorandum—

“ I would not for one moment deny that there have been other reasons also and that Governments in the Indian States also have not in many cases paid due attention to the development of their territories.”

May I specify one such reason which is relevant to this question which is before the Committee at this moment? There is no recourse to any tribunal beyond the State's own Court: and I know that this is one of the several reasons why people from British India, and, if I may say so, even people from the Indian States, fight shy of commercial or industrial enterprises on a scale bigger than the most modest. I know of many instances of this handicap. Those who have had anything to do with such enterprises in the Indian States would confirm me. It is for this reason that the Political Department is sought to be brought in for large-scale ventures in Indian States. The reasons for this may be many. In many cases the Judges are not of a high order of legal knowledge and experience. In some the Ruling Chiefs do not leave the Judges a very free hand. In most cases the prospects of the Presiding Judge depend on the sweet will of the Ruling Chief. I would therefore ask Their Highnesses of the Indian States to consider if they will not help themselves by removing this one handicap, which may be one of many others, on development of Indian State areas, by agreeing to the right of appeal in non-federal matters from Indian State Courts to the Supreme Court. Mr. Jayakar suggested yesterday a convention to this effect. I am not in a position to say how this can be done. My sole purpose in saying these few words is to impress on Their Highnesses this remedy for the backwardness of Indian States in matters commercial and industrial, which are connected with the questions before the Committee at the moment. Perhaps there may be a device to remedy this without affecting the

sovereignty of the States, about which Their Highnesses are very particular. In any case I wish these points to be on record for the consideration of this Committee and of Their Highnesses.

*(The Committee adjourned at 1 p.m. and resumed at 2-30 p.m.)*

*Sir Muhammad Shafi:* Towards the commencement of my speech, in opening this debate, I ventured to observe:—

“Such has been the rapid change in the political conditions and constitutional ideals in India during the post-war period that now, at this moment, there is practical unanimity among all schools of political thought in India in favour of the early establishment of a Supreme Court.”

I venture to think that the debate, extending over several days, has conclusively established the correctness of that observation. All political parties in British India and the Indian States have expressed unanimously a demand for the creation of such a Court in India, and the debate has completely established the correctness of the observation in my opening speech which I have just quoted. Apart from differences of opinion with regard to detail, then, the whole of India, British as well as Indian India, is unanimous in its demand for the creation of a Supreme Court in India. And, if I may venture to say so, representatives of Indian States have made a magnificent and generous response to the demand of British India in this respect, and have given a signal proof of their broad-minded patriotism which has won our deep admiration. The position, then, is this. There is a universal agreement among all schools of political thought in India, both British India and Indian India, in favour of a Supreme Court in our country. And, if I may venture to say so, Lord Chancellor, your own memorandum recognises the validity as well as the reasonableness of this demand.

The main question for the consideration of this Committee is, of course, the jurisdiction to be exercised by this Supreme Court when it is created. In the first place, we have to consider the question of the original jurisdiction to be exercised by this Court. The ordinary original jurisdiction which this Court is to exercise was summarised in paragraph 8 of your memorandum, Lord Chancellor; and the debate, covering several days, has shown a complete unanimity with regard to the correctness of the position embodied in that paragraph. There is general agreement that the jurisdiction of the Court should extend to all the matters specified in the paragraph to which I have referred.

Then, there is the second branch of the jurisdiction of this Court, upon which I had something to say in my opening speech—that is to say, advisory jurisdiction. All speakers have agreed that the Supreme Court should have advisory jurisdiction on a reference made to it by the Governor-General.

*Sir Tej Bahadur Sapru:* Not Mr. Jinnah.

*Sir Muhammad Shafi:* Oh yes, I do not remember any dissent.

*Sir Tej Bahadur Sapru:* Mr. Jinnah did not.

*Sir Sultan Ahmed:* I objected.

*Sir Tej Bahadur Sapru:* You objected, and Mr. Jinnah also objected to-day.

*Mr. Zafrullah Khan:* No other person?

*Sir Tej Bahadur Sapru:* No other person; quite right.

*Sir Muhammad Shafi:* Well, there is almost unanimity.

*Sir Tej Bahadur Sapru:* There you are right.

*Sir Sultan Ahmed:* Did the States agree?

*Sir Tej Bahadur Sapru:* I doubt it.

*Sir Muhammad Shafi:* But, in addition to a reference to it by the Governor-General, I have made another suggestion, that on an objection raised in the Legislative Council by a group of representatives that a particular measure or a particular portion of a measure infringed fundamental rights, and when a majority of the representatives of that group demanded it, a reference should be made to the Court for their opinion. I pointed out, during the speech of my friend across the table, that whether that reference is made by the Governor-General or by the President is immaterial, and that the real point is the making of such a reference in those circumstances. On that point there has been difference of opinion among the members of this Committee. Sir Tej Bahadur Sapru and some of my friends across the table have expressed the opinion that, instead of any reference to the Court at that stage, parties should be left to their remedy at law. I venture to submit that my learned friends, with all respect to them, have failed to appreciate the real object of my suggestion. The real object of my suggestion was to avoid the bringing into existence of a state of things in India calculated to widen the gulf between the communities. I wanted to nip any possibility of communal differences and communal tumult in the bud, by a reference of the question at once to the Court. What will be the result if the remedy which I have suggested is not adopted? The result will be that there will be tremendous agitation all over the country during the period when the measure is passing through the two Houses of the Central Legislature; and after such a measure has been actually enacted, the lesson of civil disobedience, which has been taught to the people of India during the last few years, will not be forgotten. There will be conflict between authority and the section affected by such legislation. In the third place, there will be protracted litigation in Court, with all its attendant agitation subsequently when a suit has been instituted questioning the validity of the enactment. Do my friends across the table, who expressed their opposition to my suggestion, contemplate such a state of things continuing over a long period—continuing over the period occupied by the debates in the two Houses of the Central Legislature, and that subsequently occupied by the litigation which will be started in Court, with all its attendant agitation and troubles in the country—do they con-

template all that with equanimity? I venture to submit that the best thing in the interests of the country—in the interests of peace and goodwill between the different communities—would be to hedge it in with all the restrictions you like, but to leave the group who feel that they are affected by any enactment in any Bill—who feel that their fundamental rights have been infringed—free to facilitate a reference to the Court at that stage in order to obtain the opinion of the Court.

*Sir Tej Bahadur Sapru:* Will you tell me how long you anticipate litigation starting during the progress of the Bill to last in the Supreme Court or in the Federal Court, raising the question of the validity of that legislation? How long do you think such litigation will last after the Bill has been passed?

*Sir Muhammad Shafi:* The reference to the Federal Court and its opinion will, comparatively speaking, take only an insignificant time, while the passage of such a measure through the two Houses in the first instance, and subsequently the institution of a suit in an original Court, and then an appeal against that right up to the highest Court of Appeal, will extend over a long period—much longer indeed than a reference to the Federal Court in the first instance. I can assure my colleagues that the suggestion I made was conceived in the best interests of intercommunal co-operation and goodwill, and in the best interests of India, and was calculated to nip in the bud an evil which, if allowed to remain during all that period when litigation in the Courts was going on, would bring about disaster so far as intercommunal co-operation is concerned.

*Mr. Jayakar* suggested that the Court should have original jurisdiction in cases against foreign nationals. I venture to submit that that would be unnecessarily burdening the Court with business which could very easily be done by ordinary Courts in India. Of course, these foreign nationals would have a right of appeal to the Federal Court if the questions involved in the case were such as were cognizable by the Federal Court. Otherwise, there is no reason why the cases of these foreign nationals should not be tried by the ordinary Courts in the country, up to the High Courts in the various Provinces.

Coming now to the appellate jurisdiction of the proposed Court, in federal matters, there is unanimity of opinion amongst all who have taken part in the debate that the Court should have appellate jurisdiction in the matters specified in the Lord Chancellor's Memorandum. I need not, therefore, dwell upon that portion of the subject any longer. There is, further, complete unanimity, as far as I can judge, with regard to the civil appellate jurisdiction. There is, however, a difference of opinion on my suggestion regarding the criminal appellate jurisdiction which, I submitted, the Court should possess.

I notice that, as regards cases of appeals by Government against acquittals—in which cases I suggested that, should the High Court

convert an acquittal into a conviction, there ought to be an appeal to the Supreme Court—with the single exception of my friend on my right (Sir Sultan Ahmed), who happens to be the Government Advocate of Bihar, no one opposed that suggestion of mine. I venture to submit that, if my friend could for a moment divest himself of the position which he occupies in the Province of Bihar, his judgment would be somewhat different. At any rate, I, for one, feel confident that would be the case. It seems to me that, when a man has been tried by a Sessions Judge with the aid of assessors, and that trial has resulted in his acquittal by a Court which has had the witnesses before it, then I venture to submit that even if that extraordinary provision in our Criminal Procedure Code, authorising appeal against an acquittal, is to remain—and I, for one, think that it ought to be expunged—then it is in the highest degree unjust to the accused person that, should the High Court reverse the acquittal and convert it into a conviction, there should be no further appeal against the judgment of the High Court. The High Court has not, as is obvious, had the witnesses before it. It knows nothing about the demeanour of the witnesses; it knows nothing about the effect which that demeanour has produced upon the Judge who actually tried the case; and, merely on the printed record, the High Court, after hearing Counsel, comes to an opinion on the facts of the case.

*Sir Sultan Ahmed:* Will the second appellate Court have any further advantage on these points?

*Sir Muhammad Shafi:* That is beside the point—I submit that does not at all touch the essence of the argument which I am placing before you. At any rate, it will be in the same position as, if not in a better position than, the High Court, for it will have two conflicting opinions before it—one by the original Court trying the case and the other by the High Court; and no doubt it will bear in mind the fact that the Judge who presided over the original Court was in a far better position to come to a correct judgment than the High Court. I submit that it is in the highest degree unjust to an accused person that, once he has been tried by an original Court, and the presiding Judge has had an opportunity of seeing the witnesses and watching their demeanour, and has had much better opportunities of coming to a correct judgment than an Appeal Court, which may possibly be influenced by the advocacy of a very able Government Advocate like my friend on my right (Sir Sultan Ahmed)—I say it is in the highest degree inequitable that, when two Courts have differed in opinion in those circumstances, the accused person should not have the right to go to a higher Court in order to question the correctness of the High Court. I submit, therefore, that the highest Court of Appeal, which we are seeking to establish in India, ought to have jurisdiction to hear appeals in such cases.

As regards ordinary murder cases in which a conviction has resulted in the Sessions Court, against which conviction an accused person has had an opportunity of appealing to the High Court, and

the High Court has rejected his appeal, the case is, I admit, somewhat different. But the position which I adopted in my opening speech was that, while there is what is called a revision to the High Court in all other criminal cases in India—that is to say, after a man has been tried and convicted he has first the right of appeal to the Sessions Court, and, if his appeal is rejected by the Sessions Judge, he has the right to come up to the High Court on revision, and the revisional powers of the High Court are very extensive,—there is, on the other hand, in the case of murder trials, no authority higher than the High Court itself, which can correct any errors which may have been committed by the High Court in hearing the appeal against a conviction. I suggest, for the consideration of the Lord Chancellor, that similar power—call it power of appeal or power of revision—should be vested in the highest Court of Appeal that we are now creating in India in murder cases.

In so far as appeals to the Privy Council are concerned, the position will remain practically as it is now. In certain cases, where the Supreme Court in India has reversed or modified the decree of the High Court, there will be, I venture to submit, an appeal of right to the Privy Council; but where there are concurrent judgments delivered by the two Courts, then the existing provisions of the Code of Civil Procedure, where substantial questions of law are concerned, will remain, while of course the Privy Council will have its prerogative of giving permission to appeal in any case in which it thinks fit. I submit, therefore, that the submissions which I have made, Lord Chancellor, in connection with the appeal in criminal cases, are sound and ought to be embodied in the proposed amendment.

Coming now to another question raised during the course of the debate—who shall appoint the Judges to this Court?—I submit that the power of appointment should vest in the Crown or in the Governor-General representing the Crown, and the reason for that, I venture to submit, is self-evident. It is essential for the independence of the Court that the power of appointment should vest in the Crown, for there will be disputes between the Federal Government and one or other of the Units of this Federation, and between Unit and Unit, and in consequence, unless the appointment is made by the Crown or by the Governor-General as representing the Crown, the independence of the Court will be impaired. I venture to submit, therefore, that the power of appointment to this Court should vest in the Crown or in the Governor-General as representing the Crown.

So far as the question, from which class should the Judges of this Court be drawn, is concerned—whether they should be only practising lawyers or Judges of High Courts, and if Judges of High Courts, whether they should be lawyer Judges or even civilian Judges—I venture to submit that the real test is that the best legal talent and experience should be available for appointment to this Court. Bearing that fact in mind, I venture to submit that practising lawyers of fifteen years' standing should be the minimum

qualification so far as the Bar is concerned—and it will be noticed that fifteen years is a compromise between ten and twenty, two periods which were suggested; and also, of course, Judges of High Courts may be promoted to our highest Court of Appeal. Now, Judges of High Courts will be either lawyers or Judges selected from the Civil Service who have spent the greater portion of their period of service on the judicial side, and I have no doubt that it will be only those Judges belonging to the Services who have distinguished themselves on the Bench, and have given proof of their legal ability as well as their judicial-mindedness, who will have the chance of being promoted to the highest Court in India.

*Sir Maneckjee Dadabhoy*: I am afraid there was some difference of opinion there as regards the promotion of these High Court Judges to the Supreme Court. I believe it was argued that such a possibility should not be introduced.

*Sir Muhammad Shafi*: I have no recollection of anybody arguing that Judges of the High Court should not be promoted.

*Sir Maneckjee Dadabhoy*: Sitting Judges of the High Court—that was my impression.

*Sir Muhammad Shafi*: No; I do not remember anyone putting forward that point of view.

*Mr. Zafrullah Khan*: They are eminently qualified.

*Sir Muhammad Shafi*: Then, as regards the age limit, I venture to submit that the age limit should be seventy. My learned friend, Sir Maneckjee Dadabhoy, in that connection made a remark which evoked some laughter; but, if I may venture to say so, my friend's own instance is in point.

It will be remembered that, in my opening remarks, I did not make any suggestion with regard to the pay of the Judges of this Court, but as opinions have been expressed during the course of the debate, I venture to think that the pay of these ordinary Judges should be the same as that of the Chief Justices of High Courts other than that of Calcutta, and that it should constitute a non-voted item.

With regard to the question of removal of the Judges, I think that the analogy of Section 72 of the Australian Act ought to be adopted and that they should be removable only on an Address by the two Houses of the Central Legislature.

These are my main submissions with regard to the subject matter which is directly before us; but my friend, Sir Tej Bahadur Sapru, raised a question with regard to the High Court Judges. With regard to that question, may I invite the attention of this Committee to what the Government of India have said in their Despatch in paragraph 53 at page 49:—

“ Amongst subjects not intimately connected with constitutional issues of fundamental importance are the recommendations made by the Commission that the charges of all High Courts, including the Chief Court of Oudh and the

Courts of the Judicial Commissioners of the Central Provinces and Sind, should be put upon central revenues, and that the administrative control of all such Courts should be exercised by the Government of India and not by Provincial Governments. We have made a summary examination of these proposals and have received in very general terms the views of the Courts and the Local Governments concerned. The material before us, however, is not sufficient for the adequate consideration of these recommendations, the financial and administrative aspects of which, intricate in themselves, will require detailed exploration, in consultation with Local Governments, in the light of the decisions reached on the larger constitutional issues; and we are of opinion that they could be more conveniently approached when those decisions have been arrived at."

I venture to submit that we would be prejudging the ultimate decision, after proper enquiry and proper consideration of all the pros and cons of the question, if we were to express any opinion in this Committee here. Therefore, I do not want to say anything further on that question.

My Lord Chancellor, that is all I have to say in connection with the debates which we have had on this very important question. It must now be clear to His Majesty's Government, as a result of these debates, that all schools of thought in India are unanimous in pressing for the creation of this highest Court of Appeal in India; and, personally, I do not see any reason why the creation of such a Court should not be taken in hand as soon as possible.

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#### HEADS 5 AND 6.

##### 5.—THE MINISTRY, AND ITS RELATIONS WITH THE LEGISLATURE.

##### 6.—DISTRIBUTION OF LEGISLATIVE POWERS BETWEEN THE FEDERAL AND PROVINCIAL LEGISLATURES, AND EFFECT IN THE STATES OF LEGISLATION RELATING TO FEDERAL SUBJECTS.

The following points for discussion in connection with Head 5 were drafted by the Chairman:—

(i) *Proceeding on the basis (see paragraph 9) of this Committee's Second Report, that Executive power and authority will rest in the Crown, represented by the Governor-General, how are the Governor-General's Ministers to be appointed? Is there necessarily to be a Prime Minister; and, if so, is the selection and appointment of the other Ministers to be made invariably, and as a constitutional necessity, through him?*

(ii) *What is to be the number of the Federal Ministers; or, if no number is to be prescribed by the constitution, by what authority is the number in practice to be determined and modified?*



(iii) *Is provision to be made for the representation in the Council of Ministers of—*

(a) *the States and British India respectively, and or*

(b) *of different classes, communities or interests; if so, of what classes, communities or interests?*

(iv) *If there are to be such representative Ministers, are their respective numbers to be prescribed either in the constitution itself, or by Instructions to the Governor-General?*

(v) (a) *In what sense are Ministers to be responsible to the Legislature?*

(b) *Is this responsibility to be collective? and, if so—*

(c) *Is such collective responsibility to be recognised and expressed in the constitution?*

(vi) *What is to be the relationship of the persons appointed by the Governor-General to assist him in the administration of the "Reserved" portfolios to—*

(a) *the Legislature? (Are they, for example, to be, or become, members of one or other Chamber, with the usual rights as such to speak and vote, or are they merely to have the right to speak in either Chamber, with no power to vote?);*

(b) *the Council of Ministers? (Are they, for example, to attend all meetings of Ministers, or only when directed to do so by the Governor-General?).*

(vii) *Could the constitution itself, as distinct from constitutional usage and practice, appropriately purport to prescribe and define—*

(a) *the circumstances in which a Ministry is to be held to retain or to have lost the confidence of the Legislature, and in which it is justified or not justified in retaining office?*

(b) *the circumstances in which "in the interests of stability an adverse vote should not.....necessarily involve the resignation of a Ministry" (Second Report of Federal Structure sub-Committee, Section 35)—having regard to the fact that, in general, in parliamentary systems of government an adverse vote does not necessarily involve a Ministry's resignation?*

(c) *whether or not a Ministry would be justified in retaining office if, on any given matter, they are accorded the support of one Chamber but denied that of the other?*

(viii) *Would stability be secured in practice by an express provision in the constitution that a vote of no-confidence in the Ministry is not effective unless it is carried by a vote of not less than two-thirds (or some other arbitrarily fixed proportion) of the members present and voting (or of the total membership of one or both Chambers)?*

(ix) *Is it possible to secure, without impairing the unity of the Legislature, the expressed desire of the States that their representatives should take no part in the discussion of British Indian affairs?*

*If so, would this be satisfactorily effected by providing in the constitution that all purely British Indian matters should stand referred to a Committee consisting of all the British Indian representatives or to a Standing Committee of them?*

*Would it be possible to exclude the representatives of the States from voting on any such British Indian matter which the Ministry, having experienced or anticipating an adverse decision from the British Indian representatives, decided to bring before the Legislature as a whole as a matter of confidence?*

The following points for discussion in connection with Head 6 were drafted by the Chairman:—

(i) *Is the constitution to declare in terms that the legislative powers of the Federal Legislature and of the Provincial Legislatures are confined respectively to the spheres of Federal (and Central) subjects and Provincial subjects?*

(NOTE.—Under the present Government of India Act, it will be remembered, the combined effect of Sections 65 and 80A may be broadly stated as being that there is no statutory distinction between the extent of the legislative powers of the Central Legislature and the Legislature of a Province, except that the competence of the latter does not extend beyond the provincial boundaries. While, therefore, there are provisions\* designed to ensure that, without the previous assent of the Governor-General, neither body shall invade the sphere assigned to the other by the allocation of subjects under the Devolution Rules, the position remains as it was before the Act of 1919, that no Act passed by either is challengeable on the ground that it could be validly enacted only by the other. An affirmative answer to this question would, therefore, alter this position).

(ii) *Where are the residual legislative powers to lie?*

(iii) *Is it to be taken as accepted doctrine that “it is of the essence of a Federal constitution that the enactments of the Federal Legislature, acting within its legal scope, should have full force and effect throughout all Units comprised in the Federation” (First Report of Federal Structure sub-Committee, paragraph 8), and that consequently Acts of the Federal Legislature relating to Federal subjects will apply proprio vigore to the territory of the States members of the Federation in the same way and to the same extent as they will apply to the Provinces?*

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\* Section 67 (2), Clauses (I), (II) and (III).

(iv) *Even if the answer to Question (i) is in general in the affirmative, are the Federal and Provincial Legislatures to retain in any respect concurrent powers of legislation? If so, in what respects or in relation to what subjects (or aspects of subjects)?*

(v) *If on any matter there are to be concurrent powers, are federal laws to prevail over provincial laws on the same subject?*

(vi) *Is the question of ultra vires legislation to be left exclusively to the Courts, or is any machinery practicable which would prevent the question of ultra vires arising or of restricting inconvenience when it does arise (cf. Government of India Act, s. 84 (2) last eight lines)?*

*Chairman:* There are certain things that I am very anxious to obtain your opinion about, which are absolutely necessary for our draughtsmen to whom we shall have to entrust the task of drafting the Bill to be placed eventually before Parliament. I want now, if I may, to read out the questions upon which I want your opinion. I am very anxious that none of these questions should ~~infringe~~ upon the communal question. Up till now, I have had nothing to do with the communal question, and I express no opinion upon it; but the questions that I do want you to discuss, and which are absolutely necessary in order to frame some of the earlier clauses of the constitution, are those I am going to read out now. I am particularly anxious that we should steer clear of the communal question altogether, and I ask you to be good enough to do that. I suppose it will almost be possible to introduce the communal question into any topic of discussion, but I beg you, in discussing these matters, to keep quite clear of it. I have excised some of them so as to do away with that question.

Now the first question, if you will look at Head 6 of the paper I circulated, is this:—

“(i) Is the constitution to declare in terms that the legislative powers of the Federal Legislature and of the Provincial Legislatures are confined respectively to the spheres of Federal (and Central) subjects and Provincial subjects?”

Then there is a note about it, which reads:—

“NOTE.—Under the present Government of India Act, it will be remembered, the combined effect of Sections 65 and 80A may be broadly stated as being that there is no statutory distinction between the extent of the legislative powers of the Central Legislature and the Legislature of a Province, except that the competence of the latter does not extend beyond the provincial boundaries. While, therefore, there are provisions\* designed to ensure that, without the previous assent of the Governor-General, neither body shall invade the sphere assigned to the other by the allocation of subjects under the

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\* Section 67 (2), Clauses (I), (II) and (III)

Devolution Rules, the position remains as it was before the Act of 1919, that no Act passed by either is challengeable on the ground that it could be validly enacted only by the other. An affirmative answer to this question would, therefore, alter this position."

With regard to question (ii), I ask you to leave that out. Question (ii) is:—

"(ii) Where are the residual legislative powers to lie?"

The third question is this:—

"(iii) Is it to be taken as accepted doctrine that 'it is of the essence of a Federal constitution that the enactments of the Federal Legislature, acting within its legal scope, should have full force and effect throughout all Units comprised in the Federation' (First Report of Federal Structure sub-Committee, paragraph 8), and that consequently Acts of the Federal Legislature relating to Federal subjects will apply *proprio vigore* to the territory of the States members of the Federation in the same way and to the same extent as they will apply to the Provinces?"

On that I hope to get the assistance of the States Delegation.

"(iv) Even if the answer to Question (i) is in general in the affirmative, are the Federal and Provincial Legislatures to retain in any respect concurrent powers of legislation? If so, in what respects or in relation to what subjects (or aspects of subjects)?

(v) If on any matter there are to be concurrent powers, are federal laws to prevail over provincial laws on the same subject?

(vi) Is the question of *ultra vires* legislation to be left exclusively to the Courts, or is any machinery practicable which would prevent the question of *ultra vires* arising or of restricting inconvenience when it does arise?"

With regard to Head 5, I have excised a good deal of that so as to have no part of the communal question raised upon it. Therefore, the first question I would like to ask would be:—

"(ii) What is to be the number of the Federal Ministers; or, if no number is to be prescribed by the constitution, by what authority is the number in practice to be determined and modified?"

(iii) Is provision to be made for the representation in the Council of Ministers of (a) the States....."

I am in a little difficulty about this subject and I very much want **your help**. I think it can be discussed without trenching upon the communal question. If it cannot be, I propose to stop it going any further. It really is a very difficult question to decide.

"(v) (a) In what sense are Ministers to be responsible to the Legislature?"

(b) Is this responsibility to be collective? and, if so—

(c) Is such collective responsibility to be recognised and expressed in the constitution? ”

May I just remind you, as regards that—I have been looking into it—that, as to the doctrine of collective responsibility, it may not be possible to apply it to India. I express no opinion, because I want to hear arguments upon it. It is a very curious fact that one of my predecessors in the Chair of Lord Chancellor, Lord Thurlow, was Lord Chancellor in several successive Governments. It was about 1780—that sort of time. Apparently then collective responsibility had not reached its present height, and Lord Thurlow very often used not only to speak but vote against the Government of which he was a member—so that it is a modern doctrine. But I should very much like your opinion on that as a constitutional point. I must say it is difficult.

*Mr. Iyengar*: On one occasion he was asked by Pitt to go out.

*Chairman*: Yes, he was; that is quite true. Then, with regard to this, I want great help:—

“(vi) What is to be the relationship of the persons appointed by the Governor-General to assist him in the administration of the ‘Reserved’ portfolios to—

“(a) the Legislature? (Are they, for example, to be, or become, members of one or other Chamber, with the usual rights as such to speak and vote, or are they merely to have the right to speak in either Chamber, with no power to vote?);

(b) the Council of Ministers? (Are they, for example, to attend all meetings of Ministers, or only when directed to do so by the Governor-General?) ”

The other questions are questions relating to votes of non-confidence. I need not go into them at present. But I appeal to everybody—do please avoid any discussion of any communal matter. It need not enter into any of these questions. We must get your opinion. I do not want to discuss them in any particular order. It may be one particular member of the Committee feels competent to deal with one question and one with another, so that you need not necessarily all speak on every question.

*Sir Tej Bahadur Sapru*: May I ask one question so as to enable many of us to settle our programmes? When do the Government hope to call a Plenary Session of the Round Table Conference, and what is the programme—because there are shipping difficulties being felt by some of us? We have made arrangements and some of us are in the course of making arrangements. We should like to know from the Government definitely what is the programme they have in view.

*Chairman*: My answer to that question is this. You may have noticed—I do not know whether you have done, but I think you

may have noticed from the newspapers—that we have had a General Election on in this country, and, as a matter of fact, the Prime Minister is still at Seaham. He will be back on Thursday morning. I hope to see him quite early on Thursday morning, and I will let you know as soon as possible what the answer to your question is. Once again, I am very sorry that we have had this General Election now. I will not say more about it, but it has made it extremely difficult for all of us who have been here. But the Prime Minister will be back then, and, Sir Tej, I will convey to you as soon as possible what the position is.

*Sir Muhammad Shaif*: May I be permitted to say this on behalf of certain members of this Committee, that while we have no objection to all but sub-head (ii) under Head 6—"Distribution of Powers between the Federal and Provincial Legislatures, and Effect in the States of Legislation relating to Federal Subjects"—being discussed, because we are as anxious as any other members of this Committee to get on, we think that the sub-heads for discussion under Head 5—"The Ministry, and its Relations with the Legislature"—ought to be postponed until after the Minorities Committee has met; and therefore we would ask Your Lordship to postpone the discussion of these Heads until after that.

*Chairman*: Yes, I will try to postpone as many as I possibly can. I suppose you would not mind sub-head (vi) of Head 5—"What is to be the relationship of the persons appointed by the Governor-General to assist him in the administration of the 'Reserved' portfolios?" That really cannot touch any communal question.

*Pandit M. M. Malaviya*: Can we discuss that question without knowing what subjects are to be reserved?

*Chairman*: Oh, yes, certainly you can. But, if you do not want to discuss anything, by all means do not do so.\*

*Diwan Bahadur Mudaliyar*: Lord Chancellor, I must confess to considerable difficulty in speaking on the Head which has been thrown open for discussion. I recollect the circumstances under which this has occurred; but, at the same time, it places me in an extremely embarrassing position, because it certainly disarranges all my thoughts, and I do not know if I shall not be trenching upon forbidden ground.

*Chairman*: If you trench upon forbidden ground nobody will follow you. You will be a trespasser, but *pecca fortiter*!

*Diwan Bahadur Mudaliyar*: In any case, I expect I shall be pulled up if I do.

Now, I have understood "Reserved" subjects to be those subjects which were considered to be reserved subjects at the last Session of this Conference—Defence and External Affairs—and on the basis of that supposition I shall proceed to state my views.

With reference to the reserved subject of Defence, Lord Chancellor, at the last Round Table Conference it was not finally decided

how the Army Member should be appointed. We were more or less clear that he should be appointed by the Viceroy and not chosen by the Prime Minister, but there was considerable discussion as to whether he should be appointed from the elected members of the Legislature or whether it should be an official that may be appointed as the Army Member. Since then, the position has to a certain extent been clarified; and I venture to put forward what I think would be the view of the majority of the members sitting at this table, that it would be preferable if the appointment of the Army Member were to be by the Viceroy, but from among the members of the Legislature. Various considerations have entered into a decision on this question. At the present moment, the Indian Army is one of those subjects which is treated in a very hostile spirit by the Legislative Assembly. I speak with knowledge of the members of the Legislative Assembly, and I think it is certainly unfair to our Army that our Legislature should not have that confidence in its administration which it deserves. In other countries the Army is the pride of the Nation, and Legislatures hardly ever try to criticise the administration of the Army, as has unfortunately been the case in India. But the fault has not altogether been of the Legislature. It seems to me that, if you want a right perspective to be taken of the Army by the Legislature, nothing will help it more than the fact that the Member was chosen from among themselves. Though he would not be primarily responsible to the Legislature on all matters concerning the Army, it would be a great advance, and would place the Army with reference to the Legislature in a better position than it occupies to-day. The Army Member, Lord Chancellor, I visualise as the spokesman of the interests of the Army and as the spokesman on Army questions. He ought to come before the Legislature feeling that, on the policy which he expounds and on matters relating to the Army which he sets before the Legislature, he will be certain of some measure of support from the members of the Legislature. It will be not to the advantage of the Army itself if, from the moment the Member in charge of it steps into the Legislature, he is looked upon with suspicion and distrust and all that he says is discountenanced beforehand. I venture to think that an official Member in charge of the Army will be in that unhappy position; and I think that there is a great deal to be said in favour of choosing, from among the Legislative Council members, a Member in charge of Defence.

Having said that with reference to the choice of the Member in charge of Defence, let me at once try to place my views with reference to his position *vis-a-vis* the Cabinet in the first instance, and the Legislature in the second instance. I think that the Army Member ought to be not merely the spokesman of the Army, but that he should have definite administrative duties with reference to the Army. He should hold the portfolio of Defence. He should be able to follow the daily administration of the Army in the sense in which the Secretary of State for War in this country follows the administration. Technical details—details regarding the Army

proper and its disposition—will of course be in the hands of the Commander-in-Chief; but that portion of the Army administration which has any relationship to the Government and to the Legislature must be under his administrative control. He will hold the portfolio of Defence, and will not be merely an advocate primed from time to time to put forward before the Legislature those ideas which he has taken for just that occasion and for just the time being. With that advantage and with that position, he will partake in all the discussions in the Cabinet. He will partake not merely in discussions with regard to the Army, but with reference to all subjects which may arise for the consideration of the Cabinet. Similarly, the other Members of the Cabinet will have before them all the proposals which the Army Member may have to lay before them. This mutual understanding between the two sections—the Reserved Member in charge of Defence and the other Members—will be of great help in lubricating the wheels of the administrative machinery. At the present moment, administration is so complex that you cannot possibly conceive that Defence can be relegated and kept apart from other spheres of civil administration. The question of Defence naturally involves also questions relating to the civil departments, and questions relating to civil departments may at any time involve questions relating to Defence. It seems to me, therefore, that it is absolutely essential that there should be joint discussions both on Reserved Subjects and on non-Reserved Subjects in the Cabinet of the Governor-General. I would therefore place the Army Member in exactly the same position as other Members of the Cabinet so far as discussions in the Cabinet are concerned. Ultimately, of course, on military matters, the decision of the Army Member, if it is supported by the Governor-General, will prevail as against the views of the other Members of the Cabinet, even as ultimately, with reference to those other civil departments, the opinion of the Cabinet, whether the Army Member agrees with it or not, will prevail. He will have, so far as Defence matters are concerned, the advice, the opinion and the valuable comment of the other members of the Cabinet; but the decision will be finally his and that of the Governor-General.

*Chairman*: Is the Army Minister—as we will call him for the moment, for the want of a better name—entitled to attend as of right?

*Diwan Bahadur Mudaliyar*: Yes, My Lord; that was the point I was making.

*Chairman*: I know that, but on every question or merely on questions where the Army is involved?

*Diwan Bahadur Mudaliyar*: On every question. I would not make any distinction between the Army Member and the other Members of the Cabinet as far as Cabinet meetings are concerned. He will be present on every occasion and take part in the discussion of every question, because I think that at any stage of the discussion of a civil department question considerations may be involved relating to the Army. You cannot compartmentalise these



two things, and you cannot suggest that a discussion with reference to civil departments can go on without there being any possibility of a reference to Defence considerations or considerations relating to the Army.

Broadly speaking, therefore, I feel that, in the Cabinet discussions, the Army Member should not be in a different position from that of the other Members of the Cabinet, so far as other questions before the Cabinet are concerned; but I say that, ultimately, the decisions on Defence matters will be his and those of the Governor-General, just as decisions with regard to other matters will be those of the rest of the Cabinet and the Prime Minister.

*Chairman*: If I may interrupt again, would the Army Member be a military man?

*Diwan Bahadur Mudaliyar*: No, My Lord. I think, from what I have already stated, it is obvious that he could not be a military man, at least at the present time. I have suggested that he should be chosen from the members of the Legislature, and at the present time I see no chance of a military man being a member of the Legislature elected by constituents.

So far as his administration of his own department is concerned, he will naturally have the assistance of the military experts. Possibly he will be advised by a Military Council. Even His Excellency the Commander-in-Chief receives advice at the present time. There is a Military Council—it is not a Statutory Council—consisting of the Chief of the General Staff, the Adjutant-General, the Quartermaster-General, the Master-General of Ordnance, the Army Secretary (who is a member of the Legislative Assembly) and the Financial Adviser on military affairs. His Excellency the Commander-in-Chief acts on that advice, and it is possible that the Army Member will have a similar Council which will advise him on all military affairs, so far as his administration of the subject is concerned. With that knowledge and with that advice he will come before the Cabinet and expound the Defence policy to the other Members of the Cabinet. Where the other Members of the Cabinet agree with him, there will be no more said about it; but, should they disagree, he will take the matter before His Excellency the Governor-General, and the decision of the Governor-General will prevail.

*Chairman*: Do you envisage that the Army Member must have been somebody who was elected to the Legislature, or could he be somebody outside the Legislature, or could he be somebody outside the Legislature but with an obligation, if he were made Army Member, to get a seat within a certain time?

*Diwan Bahadur Mudaliyar*: As I envisage it, the Army Member would be of right a member of the Legislature.

*Chairman*: One of the people elected?

*Diwan Bahadur Mudaliyar*: One of the people elected. He may be outside the Legislature, just as any Cabinet Minister may be

outside the Legislature, provided that, within a certain period—three or six months—he becomes a member of the Legislature. It does not matter whether he is inside the Legislature at the time of his appointment or outside it but qualifies himself for membership in the Legislature in the ordinary way in a definite period. It is the same position with regard to any Indian Minister.

*Chairman*: I suppose he might be in either House.

*Diwan Bahadur Mudaliyar*: He might be in either House, most certainly.

*Chairman*: Might he be somebody who had been appointed by the States?

*Diwan Bahadur Mudaliyar*: I have used the words “an elected member of the Legislature” in rather a wide sense. I consider that members who are nominated by State Governments, or as some of us hope, elected by the subjects of the States, are all elected members of the Federal Legislature. They may be nominated by the State Governments; but for our purposes I consider them elected members of the Legislature, because I feel that this phase of nomination by State Governments is a temporary phase, and as time goes on that will give place to an election either by direct or indirect vote, either by the subjects themselves or by the Legislatures in the States, or by some other method which the States may think of. I am not on that question. I include, among the elected members, representatives of the States, who come in, after all, of their own right and are not nominated by the Governor-General. Therefore, these gentlemen will all be non-official members of the Legislature—not nominated by the Executive authority of the Federal Government or by the Governor-General; and any one of them, I suggest, whether he is a member of the House of Representatives or whether he is a member of the Federal Senate, will be qualified to be an Army Member. If he is not already on either of these Legislatures, he has to become a Member of either of those bodies within a given time when he is appointed Army Member.

Then, with reference to the position of the Army Member, *vis-à-vis* the Legislature, as I say, I contemplate that we should not have the rigid system of Members of the Cabinet being confined to any particular House such as you have in this country, for instance. Members of the Cabinet will no doubt be members of one House or the other, but I should like to preserve the privilege that we now have of a right of audience in the other House being given to the members of the Lower House or the Upper House as the case may be, so that, if the Army Member is a member of the House of Representatives, he would have the right to vote only in the House of Representatives, but he would have the right audience in both Chambers. Now, My Lord, by stating that he would have the right of audience in both the Chambers and that he should be a member of one of them, I do not think I have really exhausted the description of his position with reference to the Legislature.

I should like next to dwell on the question how far the Legislature will have any voice with reference to his administration and to what extent he will be answerable to the Legislature. We have proceeded on the assumption that Defence is a reserved subject and that the Minister will be responsible to His Excellency the Viceroy. But even on that basis, studying very carefully the recommendations of the Defence Committee, I see the clear necessity of laying down that, on some aspects of this administration, the views of the Legislature will have to prevail still. The Defence sub-Committee has suggested that a scheme of Indianisation should be laid down and should be carried out. The Defence sub-Committee has also suggested that there should be a gradual reduction in the number of British troops in the country. There are similarly other questions with reference to the administration of the Army. Now, if you have a policy of Indianisation agreed upon beforehand, as I hope it will be agreed upon, then there should be some method by which the implementing of that policy can be supervised—some authority which will have the control or the supervision of the implementing of that policy so as to see whether that policy is being carried out or not. At the present time, in spite of the fact that the Army Budget is non-votable, I know the Legislative Assembly has got considerable freedom in discussing Defence matters. We cannot possibly contemplate the future Federal Legislature having any less powers than the Indian Legislative Assembly of to-day. It seems to me, therefore, that the Legislature should have the power of criticising and, to a certain extent, of limiting, the discretion of the Army Member with reference to the method in which an agreed policy of Indianisation, for instance, is being carried out by him on the administrative side.

*Mr. Sastri*: In other words, that aspect of the subject of Defence is not to be considered reserved?

*Diwan Bahadur Mudaliyar*: Yes, that is exactly what it means. That is putting it into better language than I could use.

*Chairman*: You meant—Indianisation not a reserved subject?

*Diwan Bahadur Mudaliyar*: Not in that wide sense, My Lord. Presuming that there is a policy of Indianisation agreed upon, the actual giving effect to that policy cannot be a reserved subject.

*Chairman*: Let me get it right if I may—agreed policy on Indianisation not to be deemed a reserved subject. Then, does that mean this, that the Legislature will be entitled to express its will as to whether the policy is being carried out and to see that it is carried out. Is that what it means?

*Diwan Bahadur Mudaliyar*: Yes, My Lord; the Legislature will not have authority to change an agreed policy. It will have no voice on that policy which *a fortiori* has been agreed upon and must be the policy for a prescribed period of years. After that period of years, probably, by a subsequent agreement, that policy might be changed, if necessary. During that period, however, the Legislature will have no power to alter that policy; but it must

have power to supervise, and to see that the policy is implemented and carried out in the spirit in which it has been agreed upon. As to the question of the establishment of Military Centres for training, that again has to be under the control of the Legislature to the extent that the Legislature must satisfy itself that that policy is being carried out. In these and other matters, the Army Member would be responsible to the Legislature. In other matters, as I have said, he would be responsible to His Excellency the Viceroy.

*Sir Sultan Ahmed:* What are the other matters?

*Divan Bahadur Mudaliyar:* The technical administration of the Army.

With reference to the control of Military expenditure, the plan suggested on the last occasion was that the expenditure for the Army should be agreed upon on a contractual basis subject to a periodic revision. Therefore this amount will be agreed to by the Federal Legislature without question. We will not use the term, which horrifies some of us, of "non-voted items"; but it will be an item which will not really be subject to reduction by the Legislature. The Army Member, however, must have a certain amount of control, and the Finance Member in particular must have a certain amount of control even within the contract amount. It ought not to be open to the Army Member—and here, My Lord, I am speaking because we have some little idea of the present contract system, though it may not be the exact contract system which we contemplate for the future—I say that the Army Member cannot have the right to spend the contract amount in such a way that, at the end of the contract period, the recurring liabilities would be increased substantially, making it impossible for a revised contract to be come to except on certain basis. Supposing 45 crores is allotted to the Army to-day for its expenditure, of which the recurring items of expenditure amount to only 30 crores, and the non-recurring items of expenditure are 15 crores, it is possible that, at the next contract period, the non-recurring items of expenditure will be very considerably curtailed and a new amount may be fixed upon; but supposing, in the meanwhile, commitments are entered into, because a contract amount has been given, whereby the recurring amount of expenditure is increased from 30 crores to 40 crores, then it is obvious that, at the second stage of revision, to the extent of 40 crores your hands are tied. Take, for instance, the revision of the salaries. Supposing, for instance, because the Army has got 45 crores of expenditure at the present time, salaries are revised substantially in such a way that the recurring obligations increase, then it seems to me that, at the next period of the contract, we cannot go behind those salaries which have been revised, and therefore indirectly, and to that extent, the liberty to revise the contract is threatened. Therefore, what I am driving at is this. Though the contract amount has been fixed—though the Legislature will vote for that contract amount without question—it does not mean that the Chancellor of the Exchequer of the Federal Government would have no control over Army expenditure. He has

constantly to watch the growth of Army expenditure even within the contract amount, and to see that the recurring obligations are not piled up without his consent. Then again, My Lord, even with reference to the contract amount, supposing we have fixed 45 crores for a period of five years, within that period occasions may arise, economic disasters may take place, the revenues of the Federal Government may suddenly tumble down as the revenues of most governments have tumbled down during the last few weeks; and it may be necessary to revise the contract amount within that period. There ought to be machinery open (the same machinery and the same sort of agreement may be come to) but there ought to be machinery open if, in such emergencies, a revision is necessary.

I will give one more reason why I am somewhat insistent on this suggestion that the Army Member should be non-official. Your Lordship will see that, in the Defence sub-Committee's Report, page 62, it is stated:—

“ The sub-Committee considered that, with the development of the new political structure in India, the defence of India must to an increasing extent be the concern of the Indian people, and not of the British Government alone.”

My Lord, when we speak of reserved subjects, let us be clear in our mind that we speak of them for a transitory period; that we do not contemplate a permanent reserve subject for all time to come; that we contemplate a transitional stage. If we are contemplating a transitional stage, I venture to think that we must have some machinery whereby that transitional stage may be a real transitional stage and whereby we might emerge into a final stage where conditions will be different. If we have an official Member all through, how is the non-official to get any experience of Army administration? How is this period of transition to end? How is this knowledge of Army administration to come to any non-official responsible Indian Member at all? I know that, when the great Lord Morley made the experiment of introducing Indian Members into the Executive Council, there was some diffidence expressed in this country; but there was a great deal more criticism in my own—that these gentlemen were mere “brown bureaucrats” instead of “white bureaucrats”, and that they would do no good at all, and it was a reform in which nobody was interested. We have had some of these brown bureaucrats at this table, and I venture to think that, whatever criticisms we might have made during the past, we must express our indebtedness to the great and valuable contribution which they have made and which they would have been unable to make had not they occupied the position which they held as “brown bureaucrats”. It seems to me, therefore, that for any useful purpose to be served with reference to the Army after the transitional stage, you must go through a stage when some of our own countrymen will be the responsible Members in charge of the Army, responsible to the Viceroy, just as Members of the Executive Councils to-day are responsible to the Governors and to the Governor-General. In that way they will gain that knowledge and

experience which will be an invaluable asset if that transitional stage should ever come to an end. I therefore plead very earnestly that, without giving up the idea of a reserved subjects in any way, and without trying to trench on that position, it would be better, both in the interests of the Army and in the interests of the development of the constitution, if the Army Member is chosen from among the members of the Federal Legislature.

As regards the Member in charge of External Affairs, my position is slightly different. I do not know how many members on this side will agree with me, but I am not insistent on the demand that the Member in charge of External Affairs—foreign affairs—need necessarily be an elected member of the Legislature, using that word in the widest sense. My reason is this. I see, My Lord, both in this country and elsewhere, that legislatures are not so completely seized of foreign affairs as they are seized of defence and other matters. The very fact that distinguished foreign ministers have been members of the Upper House in this country shows that the popularly elected Chamber does not require the same amount of control over foreign affairs—in fact, it could not very well exercise it without detriment to foreign political relations. It does not require the same amount of control over foreign affairs as it does over other matters. I would, therefore, not object even to an official being appointed to be in charge of foreign affairs. His relationship with the Legislature on these questions will be of a very meagre character. I have no doubt about that. I do not think that, even when we have complete control, including control of External Affairs, the Legislature will play a very large part in shaping foreign policy. That is done, as we all know, behind the scenes, in Cabinets and committees of Cabinets, and not by discussion on the floor of a popularly elected Chamber.

*Chairman:* You think there might be somebody like our Permanent Under-Secretary of State for Foreign Affairs?

*Diwan Bahadur Mudaliyar:* No, My Lord; I want him to have the status of a Cabinet Minister.

*Chairman:* I thought you said that the person who would advise the Governor on external relations need not be in the Legislature. That is what I thought you said.

*Diwan Bahadur Mudaliyar:* I said he need not be an elected member of the Legislature. He would certainly be nominated to the Legislature after his appointment, but he would not be chosen from among the elected members of the Legislature.

*Chairman:* Then you are in favour of some nominated members for the Legislature?

*Diwan Bahadur Mudaliyar:* I am not against this gentleman being nominated to the Legislature.

*Chairman:* Nominated by whom?

*Diwan Bahadur Mudaliyar:* By the Governor-General.

*Chairman:* He would nominate this gentleman who would assist him in the management of External Affairs, and his nomination would make him a member of the Legislature.

*Diwan Bahadur Mudaliyar:* Yes; but so far as the Cabinet is concerned, he would certainly be a Member of the Cabinet; and I visualise that these questions also will certainly come for discussion before the Central Government just like the Army questions, and that the rest of the Members of the Cabinet will be completely informed of all that is going on, the decision ultimately resting with the Viceroy on the advice of the Member in charge of that.

*(The Committee adjourned at 4-1 p.m.)*

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PROCEEDINGS OF THE FORTY-THIRD MEETING OF THE FEDERAL  
STRUCTURE COMMITTEE HELD ON THE 28TH OCTOBER, 1931, AT  
11 A.M.

HEADS 5 AND 6.

5.—THE MINISTRY, AND ITS RELATIONS WITH THE LEGISLATURE.

6.—DISTRIBUTION OF LEGISLATIVE POWERS BETWEEN THE FEDERAL  
AND PROVINCIAL LEGISLATURES, AND EFFECT IN THE STATES OF  
LEGISLATION RELATING TO FEDERAL SUBJECTS.—(*continued*).

*Diwan Bahadur Mudaliyar:* Lord Chancellor, Last night, when we broke off, I was dealing with the question of the position of the Minister in charge of External Affairs, and I said that I had no objection to his being an official, because the relations of the Legislature to matters of foreign policy are so meagre that it would not make a very great difference whether he was an elected member of the Legislature or an official nominated by virtue of his capacity as Minister of External Affairs to either of these Chambers, and preferably to the Upper Chamber, but having the right of audience in both Chambers.

What exactly is meant by foreign affairs has not yet been defined, and the extent to which they will be "reserved" has not really been understood either. I am very anxious to make it clear at this stage that there are some affairs which may be technically called external affairs, but which in truth are not such, and in respect of which the Legislative Assembly at the present time, and the Federal Legislature of the future, must continue to have some sort of power to criticise, and probably to control. Let me take the question of the position of Indians overseas. At the present moment, Lord Chancellor, the Legislative Assembly has a right to criticise the position of Indian subjects overseas, and it has concerned itself very much with this question during recent years. If I might divide that subject, again, into two categories—the position of Indians in other Dominions of the Empire and the position of Indians in other parts of the world which are not Dominions of

the British Empire—at the present moment, to the best of my knowledge, a member of the Government is in charge of the subject of Indians overseas in the British Empire, and the Foreign Secretary is in charge of Indians in other parts of the world than the British Empire. So far as Indians in other parts of the British Empire are concerned, I am clear in my mind that the future Federal Legislature should have control both over the policy and with reference to the administration of that particular subject—what little administration there can possibly be over such a subject. So far as Indians in other parts of the world than the British Empire are concerned, I realise that the Legislature cannot have that control which it can claim to have over the first category of subjects. In any case, my view is that the Foreign Minister, if this subject should be in his control, as I trust it will be, so far as British Indians in the Dominions of the British Empire are concerned, should be amenable to the control of the Legislature in that behalf.

Turning to another subject which has recently come very much under discussion in the Indian Legislative Assembly, we are now thinking of organising Trade Commissioners in various parts of the world on behalf of India, and I believe a scheme is afoot whereby such Trade Commissioners will be appointed in various commercial centres of the world. The importance of this subject cannot be denied. We all know that, in many parts of the world, there are the Consuls and the Vice-Consuls of Great Britain and they are often the Presidents of British Chambers of Commerce in such places. We know that commercial secretariats are a necessary auxiliary to various Ambassadorial delegations in different parts of the world. Now, I have no idea of encroaching on Foreign affairs, but I think the Legislative Assembly has now some amount of control over the establishment of Trade Commissioners or commercial secretariats; and the Federal Legislature must obviously continue to have that power also.

Therefore, in respect of these two or three items the Legislature will exercise some amount of control, though technically they may be grouped under the category of External Affairs. As I have said, Lord Chancellor, both with reference to the Army and with reference to External Affairs, in spite of the fact that they are treated as reserved subjects, there are some aspects of them in which the Legislature must have some control.

Now, I ask myself, what is the position of these two Ministers, the Minister of the Army and the Minister of External Affairs, with reference to those subjects and with reference to the Legislature? Normally speaking, when the Legislature has a control over those subjects, it might be expected that the Army Member would stand by his policy and would have to resign if the Legislature did not accept his policy. At this stage I come against two difficulties. In the first place, I do not visualise the possibility of a single Member of the Cabinet resigning because his policy has not been accepted by the Legislature. In the second place, it would obvious-



ly be anomalous to expect a whole Cabinet to vacate office because the policy of the reserve Member, on a small portion of the subject which happens to be under the control of the Legislature, has not been accepted. You cannot therefore ask the Army Member to resign because, with respect to the Indianisation policy, the implementing of it has not been carried out according to the wishes of the Legislature; and you cannot expect the whole Cabinet to be turned out on a vote of no-confidence because, on a reserved subject and on a very small portion of the reserved subject, the Legislature differs from the Member in charge of that subject. It seems to me that the difficulty can only be got over in one way—that it should be understood from the beginning that, if the Legislature, on these particular subjects which have to be very carefully classified, expresses its wishes, it must be understood that the Army Member or the Member for External Affairs will carry out those wishes and that the Governor-General will see that those wishes of the Legislature are carried out. An analogy—it is not a parallel—may be found in the Swiss Constitution, where, broadly speaking, Ministers are expected to carry out the wishes of the Legislature on certain subjects. I do not suggest that is a parallel; it is merely an analogy. What it really comes to is this, that with reference to these particular subjects, the Army Member or the Member in charge of External Affairs will have to convince the rest of his colleagues on the Cabinet; and, if the Cabinet agrees with him, no question of a clash with the Legislative Assembly can really arise. If, however, the rest of the Cabinet is not with the Army Member or the Member in charge of External Affairs on this subject, then the Governor-General will have a clear indication of what action he would have to take, as the person ultimately responsible for these reserved subjects.

These are my submissions, Lord Chancellor, with respect to sub-head (vi) of Head 5.

*Mr. Joshi:* I should like, if I may, to put a question to Diwan Bahadur Mudaliyar. Why does he make a distinction, so far as Indians overseas are concerned, between those who go to the Dominions and those who go to foreign countries? Under the Indian Emigration Act, the Indian Legislature has power, not only to discuss these matters, but to have a final voice in the matter of Indians emigrating not only to the British Dominions but also to foreign countries—so that there is really no reason to distinguish between foreign countries and the British Dominions so far as Indians overseas are concerned.

*Sir Tej Bahadur Sapru:* I should like to put a question to Mr. Joshi. What does he mean by saying that the Indian Legislature has a voice? Take, for instance, the case of Indians going to the Belgian Congo. What can the Indian Legislature do with regard to Belgium or the Belgian Congo?

*Mr. Joshi:* The Indian Legislature has a right to prevent emigration.

*Sir Tej Bahadur Sapru* : That is a different matter; it is not in relation to foreign countries, but in relation to its own nationals before they depart.

*Mr. Joshi* : The Indian Legislature has the power to fix the conditions in which emigration shall be allowed.

*Sir Tej Bahadur Sapru* : But inside India, before they have departed.

*Diwan Bahadur Mudaliyar* : I think the answer to Mr. Joshi's question is obvious. I was looking at the matter from the other end, so to speak. I was looking at the question of relations with other countries. The Indian Legislature has no control over the relations with the Belgian Congo or any other foreign country, and even with reference to the British Dominions it has no control.

*Mr. Joshi* : For the matter of that, even the British Government has no control over the Belgian Congo.

*Sir Tej Bahadur Sapru* : It is a matter for diplomatic negotiation.

*Mr. Joshi* : There is no difference, therefore, between Dominions and foreign countries at all.

*Diwan Bahadur Mudaliyar* : I should now like to take up sub-head (ii) of Head 5, which is as follows:—

“What is to be the number of the Federal Ministers, or, if no number is to be prescribed by the constitution, by what authority is the number in practice to be determined and modified?”

There are three alternatives on this question of fixing the number of Ministers, which I see have been adopted in various constitutions. The first proposal is not to fix any number at all, and that, I see, is the basis on which the Canadian Constitution, for example, is working. The result of it has been that the number of Cabinet Ministers has grown and grown until, at the present day, I think I am right in saying that there are 23 Canadian Ministers working the Constitution of Canada. The South African Constitution, on the other hand, has made a rigid provision and has fixed ten as the maximum number of Ministers who can work that Constitution. It cannot be altered except by way of a constitutional amendment. The Parliament has no power to increase that number. In between is the Australian model—which I recommend for adaption to Indian conditions—whereby initially the number is fixed, but power is given to Parliament to increase that number. I refer to Sections 64 and 65 of the Constitution of Australia:—

“Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs.”

I would recommend a provision analogous to this for adoption with reference to Indian conditions.

I suggest that the number may be fixed at ten for the present, the ten including the two Ministers in charge of Reserve Subjects, the Minister for Defence and the Minister for External Affairs. Roughly speaking, I would like the portfolios to be divided in the following manner: The Prime Minister (and I will later indicate what portfolios he may have); the Minister for Finance; the Minister for Trade and Commerce; the Minister for Railways and Public Works; the Minister for Customs and Inland Revenue; the Minister for Justice; the Minister of the Interior, whose portfolio will include immigration and colonization; the Postmaster General; the Minister for Defence and the Minister for External Affairs.

*Chairman:* What about Health?

*Diwan Bahadur Mudaliyar:* I did not contemplate that to be a Federal or Central subject, My Lord. That is why I have not put in a Minister for Health.

*Chairman:* Do you contemplate any central co-ordination of Education? At present, European education is a reserved provincial subject and Indian education is a transferred provincial subject. Do you contemplate any sort of co-ordinating central authority or not?

*Diwan Bahadur Mudaliyar:* I do not contemplate that.

I believe that the present portfolios of the Member in charge of Land Revenue, Health and other subjects will disappear altogether. That is an anomaly even at the present time; and I do not contemplate that, with full provincial autonomy, there will be any need for those portfolios.

*Chairman:* Whom do you contemplate as being in charge of minor administrations like Delhi and Ajmer?

*Diwan Bahadur Mudaliyar:* I have kept the Prime Minister free altogether; I have not assigned any portfolio to him. If there is to be a Minister for a group of subjects which cannot be readily included in any category, or for which a definite name cannot be given, there will be a Ministry for Miscellaneous Affairs, in which case one of these other portfolios will be attached to the Prime Minister.

*Chairman:* When you talk about Trade and Commerce, have you included industries in that?

*Diwan Bahadur Mudaliyar:* Yes, My Lord.

I have kept the Minister of Finance absolutely free to deal merely with finance. I do not want any administrative portfolio to be entrusted to him. At the present time, the Finance Member has also got some administrative control; for instance, he is in charge of Customs and Inland Revenue. I do not think it would be proper to give that administrative control to him. What happens at the present time—and I say it without any reflection whatsoever—is that the moment the finances of a State are found to be insufficient, tariffs are raised automatically, as they are the readiest means of affording revenue, or the Income-tax is raised—the Minister in

charge of Finance also being in the administrative control of these two subjects. I do not think this has worked happily for India, and I feel that the Minister for Finance should be absolutely independent of any administrative subject whatsoever, so that on all administrative subjects he may be able to bring to bear an unbiassed mind merely from the point of view of the Treasury.

*Sir Provash Chunder Mitter*: Who will collect the Income-tax?

*Diwan Bahadur Mudaliyar*: There will be a Board of Revenue under the Minister for Customs and Inland Revenue.

I must make clear another point with reference to this, My Lord. So far, we have been proceeding in India on the basis that all Ministers are of equal rank. I do not think it is necessary to predicate that. In your country there are Ministers of different ranks, if I might express it in lay language, and I contemplate that, as the number of Ministers increases, it would not be possible to have all Ministers of the same rank, but it might be necessary to have Ministers of different ranks.

*Sir Tej Bahadur Sapru*: Would they all be getting the same salary?

*Diwan Bahadur Mudaliyar*: I am speaking of salary rather than of importance. The Postmaster-General may be, from the point of view of salary, of a different status from the Finance Minister.

*Sir Tej Bahadur Sapru*: It is really a question of emoluments.

*Diwan Bahadur Mudaliyar*: Yes, 'it is really a question of emoluments.

Then, My Lord, perhaps I might go to sub-head (v), which Your Lordship indicated as open for discussion:—

“(a) In what sense are Ministers to be responsible to the Legislature?

(b) Is this responsibility to be collective? and, if so,—

(c) Is such collective responsibility to be recognised and expressed in the constitution?”

I would take sub-head (vii) along with that, because the two really go together. Excluding, for the time being, the two Ministers in charge of reserved subjects, I contemplate obviously the rest of the Ministers to be responsible to the Legislature. They will, in the first place, be responsive, as all Cabinets are, to the Legislature; but they will also be responsible in the sense that, if the Legislature loses confidence in their administration, they will have to vacate office. The general phrase “parliamentary responsibility,” well understood in all constitutions, is what I contemplate with reference to those Ministers who are in charge of subjects other than reserved subjects; and so far as I am concerned, I can conceive of no responsibility which is not based on the theory of joint or collective responsibility. It seems to me that there can be no real responsibility if each individual Minister can be hauled up by the Legislature and can be told he does not possess the confidence of the

Legislature. My experience of the working of the dyarchic constitution in the Provinces has made it clear that individual responsibility of Ministers makes for chaos in administration and makes for the breaking up of Ministries at short intervals. If the example of Madras is quoted as that of a Province which has fairly well worked the dyarchic system under very difficult circumstances, let me assure Your Lordship and the Committee that one of the prime reasons of that result is the fact that in Madras, we have always recognised and acted on the principle of the joint responsibility of Ministers in charge of transferred subjects. If each Minister were to go and canvass for support in the Federal Legislature, then it would not make for that unifying of policy which is essential in carrying out the administration of a sub-continent like India. Howsoever Members may be returned to the Legislature, howsoever before they enter the Legislature they may woo various and varying constituencies to find an entrance into that body, once they have come into the Legislature they must be responsible for supporting a set of persons who will be in office and in charge of the administration. I see much greater danger in thinking of responsibility of individual Ministers than in visualising the possibilities of separate or joint electorates, or whatever other manner of constituencies may be devised for returning members to the Legislature. The one thing on which we should all be united is that the responsibility of the Executive should be a joint responsibility. It is there that an amalgam must be made of varying interests, of conflicting claims and of diverse view-points; and if the administration is divided internally, that administration is bound to break up very soon indeed.

Therefore, I lay the greatest stress on the fact that the responsibility of the Executive must be a collective or joint responsibility and that individual Ministers cannot be held individually responsible for their Department. That, of course, does not mean that an individual Minister may not be asked to vacate his office by the Cabinet itself or by the Prime Minister, if he were not to discharge his duties in the manner in which he is expected to do so; but the Legislature as such can only look to the entire Government for the discharge of its proper responsibilities—it cannot single out any particular individual and say that he has failed to discharge his duties. I do not think, however, that it is necessary to embody this principle in the constitution. I would rather allow the growth of convention and understanding to take place from the very start—that Ministers are jointly responsible, and not individually responsible, to the Legislature. It is not necessary to put a specific clause in the constitution for that purpose, although such a clause finds a place in some constitutions. On this point I have no particular view to press, but I do press the view that the responsibility must be collective and joint and not individual.

Now, My Lord, how is the Legislature to enforce this responsibility? How is the Cabinet to vacate office if the Legislature is not satisfied that the Cabinet enjoys its confidence? On the last

occasion, when we discussed this subject, various expedients were devised; but there was one thought which ran throughout the discussion, namely, that it is essential to secure the stability of the Cabinet against the passing whims and fancies of a democratic House.

*Chairman* : That is Section 35 of the last Report, is not it?

*Diwan Bahadur Mudaliyar* : Yes. The Report says:—

“ For the purpose of securing greater stability to the Executive the suggestion was made, and found a large measure of support, that Ministers should not be compelled to resign save in the event of a vote of no confidence passed by a majority of at least two-thirds of the two Chambers sitting together. Ministers against whom less than two-thirds of the votes have been cast on a motion of no confidence would not, however, for that reason alone, continue to enjoy to any greater extent than before the confidence of the Legislature who would still be able in other ways to make effective their want of confidence.”

This is the important point:—

“ But the sub-Committee are of opinion that some means should be devised whereby in the interests of stability, an adverse vote should not on every occasion necessarily involve the resignation of the Ministry and that the subject should be further explored.”

Now, My Lord, I wholeheartedly support that last sentence. I took that view on the last occasion, and I do not see any reason to change that view. We must secure the stability of the Ministry against every passing gust of popular passion. My belief in democracy is not less than that of other Members here, but my belief in the importance of the administration and the vastness of the concerns that will be entrusted to the Cabinet, and therefore in the need for a Cabinet reasonably sure of its position, is so great that I am willing, notwithstanding the possible departure involved from technical theories of democracy, to make some provision for the reasonable stability of the Ministry.

*Dr. Ambedkar* : Is not it even here open to the Prime Minister to interpret the resolution of no-confidence or defeat in the House? There is no obligation on him to resign.

*Diwan Bahadur Mudaliyar* : I am just coming to that. As I have followed the working of various democratic constitutions, latterly at any rate, and since the War in particular, the tendency has been not to look at every single adverse resolution of the Legislature as necessarily expressing want of confidence in the Ministry. The old Gladstonian idea that the Legislature cannot turn down a single comma of a draft Bill introduced by an executive government is not to-day as effective as it was before; and Cabinets have come to realise that they need not treat every adverse vote of the Legislature as necessarily implying want of confidence in the Ministry.

Therefore, My Lord, in the first place, I do not think that every resolution passed by the Legislature though opposed by the Ministry, should be treated as a vote of no-confidence at all; and, in the second place, I would not treat an adverse vote on any section of a Bill as a vote of no confidence, unless the Ministry itself chooses so to regard it. I would not make an adverse vote a necessary reason for thinking that the Ministry has lost the confidence of the House. I contemplate a motion of a direct vote of no-confidence being tabled and passed by the Legislature—a direct vote of no-confidence which would involve the resignation of the Ministry.

Last time we discussed various percentages of votes. Since then, having given the best consideration to the subject that I can, I have come to this conclusion, that a direct vote of no-confidence cannot be initiated unless a specific number of members of either House express a desire that such a motion should be taken up. I adopt the Czecho-Slovakian example, which has been referred to by Sir Tej Bahadur Sapru for the purpose. Supposing a third of the members of either the House of Representatives or the Senate indicate a desire by a signed memorandum to that effect.

*A. Member:* A third of the members present?

*Diwan Bahadur Mudaliyar:* No. Supposing a third of the members indicate a desire that they want a resolution of no-confidence to be discussed, it should be obligatory on the Cabinet to arrange for the discussion of that motion. Secondly, that motion will be discussed at a Joint Session of both Houses, the House of Representatives and the Senate sitting together and discussing the motion. Thirdly—and here I come to the question of majorities—I shall be content if, by an absolute majority (that is, by a majority of the total strength of the two Houses as distinguished by the number of persons present) that motion is carried, and then the Cabinet will have to vacate office. On the last occasion, I have to remind the former members of the Committee, the suggestion of Sir Tej Bahadur Sapru of a two-thirds majority was not pressed by him and was in fact withdrawn when it was shown that, in working out the percentages and the actual figures, it might easily happen that, on that basis, a Cabinet will continue in office notwithstanding the fact that the entire section of British Indian members did not express confidence in them. There is another reason why I have resorted to this expedient of an absolute majority. We have discussed at great length the procedure to be adopted in carrying out legislation. The encouraging appreciation which Your Lordship has extended to each one of us at the end of our speeches has made each one of us think that our views have held the field. I am looking forward with interest therefore to the Report which Your Lordship will place before us on Monday, and which will give us a real idea of what the Committee's decision on these subjects is likely to be. I assume for the time being that Your Lordship's Report will state that an absolute majority is required at a Joint Session for the purposes of carrying out legisla-

tion where one House differs from another House. If that is so, the anomaly which was foreseen on the last occasion will not arise.

*Mr. Jinnah:* What do you put down as the percentage of absentees?

*Diwan Bahadur Mudaliyar:* I do not put down any definite figure for the percentage of absentees. It depends upon the crisis. It depends upon the determination of the members of the Legislature to get rid of an odious Ministry. If the Ministry has made itself so odious, I expect the percentage of absentees will be less than one. It depends on the interest which the members of the Legislature take in their own Executive. If they are keen on turning out a Ministry, I expect every man committed to that position to be present and cast his vote.

*Mr. Jinnah:* What do you visualize?

*Diwan Bahadur Mudaliyar:* Judging from the experience of a Provincial Legislature, where votes of no-confidence have been directly discussed (and they have been discussed in the Madras Legislative Council), I put down the percentage of absentees at two at the most. We were able to record, out of 124 votes, 122 or so on the last occasion when a direct vote of no-confidence was debated with regard to the Madras Ministry in 1926.

*Mr. Jinnah:* What do you take it as for all India?

*Diwan Bahadur Mudaliyar:* Prophecy is a dangerous thing.

*Mr. Jinnah:* I know that you are not a prophet; I was only trying to get your view.

*Diwan Bahadur Mudaliyar:* I have already told you. *Mr. Jinnah,* that it really depends upon the crisis upon the extent to which the Ministry has made itself odious, and also on the organisations which will have to be built up if democratic government is to be introduced. At any rate, at the outset I think, on a real crisis, not more than 5 per cent. would be absent, if that would satisfy *Mr. Jinnah* as a basis to go on.

*Mr. Jinnah:* I am not here to be satisfied; I am just trying to seek information, because you know very well, *Mr. Mudaliyar,* that in the Assembly—you have been there and I have been there—on most critical motions the absentees bear a very large percentage.

*Diwan Bahadur Mudaliyar:* That may be so, but I also remember—and this has to be said in favour of the absentees—that, after all is said and done, in the last constitution many people felt that the position of the Legislative Assembly was not going to be of any real importance; and I would appeal to you to get out of the rut of old ideas with reference to the Legislative Assembly and think of the future Federal Assembly with the ideas involved in that, of being able effectively to carry out your ideas.

*Mr. Sastri:* We are all going to grow wings in the future!

*Mr. Jinnah:* I was only pointing out the danger. My point is this, really that even with all the desire in the world to get out of



a rut, you cannot possibly get a full attendance because of the distances and the various difficulties that will arise. I feel that there will be a very large percentage of absentees, and the difficulty that I feel is this, that in that case the absentee votes will be in favour of the Ministry.

*Diwan Bahadur Mudaliyar:* I contemplate just the reverse. The absentees are those who are generally afraid to give a vote against a Minister. Those who are anxious to support the Minister, those who are committed to the carrying on of the Ministry, will certainly be present. Those who are determined to oppose the Ministry will also be present. The absentees are just those people who want to run with the hare and hunt with the hounds. They can never be brought to the Legislature under any constitution.

*Mr. Jinnah:* If the argument is a sound one, that the absentees will not be more than one or two per cent., then why insist on the absolute majority? Why not say those present?

*Mr. Jayakar:* If you require an absolute majority, all the absentees will count as so many votes for the Ministry.

*Mr. Jinnah:* That is what I say.

*Mr. Joshi:* May I put it in this way, Lord Chancellor, that those who are indifferent will be counted, as Mr. Jayakar has said, for the Ministry; and we have to consider whether it is really for the Minister to show that he has support instead of for the Opposition to show that the Ministry has no support.

*Mr. Jinnah:* If you are so sure that we shall get out of the rut, and that there will be almost 99 per cent. present, then why insist on an absolute majority?

*Diwan Bahadur Mudaliyar:* If these conundrums are followed to their logical extent, Mr. Jinnah will be in the same vicious circle in which I think I shall find myself.

*Mr. Jinnah:* I am not in a vicious circle at all. I am presenting facts to you; that is all.

*Diwan Bahadur Mudaliyar:* I am proceeding on the basis that a snatch vote will not do. I proceed on the basis that a certain amount of stability is requisite for the Ministry.

... *Mr. Sastri:* If there is no special vote of no-confidence, the Ministry will stand.

*Mr. Joshi:* What you are really doing is to give the benefit of indifferent people to the Ministry.

*Diwan Bahadur Mudaliyar:* I contemplate two positions. If a Ministry is defeated, either there will be a dissolution or another Ministry will be constituted. If there is a dissolution, there is no need to trouble about it. If another Ministry is to be constituted, you must show that that Ministry could also work; and unless the Opposition is prepared to get an absolute majority on its side, it cannot work. Therefore, I insist on a absolute majority being shown on the vote of no-confidence itself, so that the Governor-

General may call on the Leader of the Opposition to form an alternative Cabinet. If it is merely a question of defeating the Ministry and no progress afterwards except by way of dissolution, I can understand the position of Mr. Jinnah. But I go further, and I say there ought to be a positive result also out of a vote of no-confidence; and in the large majority of cases I look forward to the positive result of an alternative Ministry, rather than the negative result of a dissolution. If an alternative Ministry is to be formed, I take it that that Ministry should at any rate have an absolute majority to carry on the work; and unless it is shown on the vote of no-confidence that that absolute majority exists, it will not really be possible to form that alternative Ministry.

*Mr. Joshi:* Supposing a Legislature consisted of three hundred members. One hundred members are indifferent as to which Party forms the Ministry. Out of the remaining two hundred members, fifty members are for the Ministry and one hundred and fifty members are against the Ministry. Will you keep that Ministry in power?

*Diwan Bahadur Mudaliyar:* Mr. Joshi, your hypothesis shows that we are not ready for self-government.

*Mr. Joshi:* I do not know whether you are or not.

*Diwan Bahadur Mudaliyar:* If one hundred members are indifferent, what will be the position of any Cabinet that is formed under such circumstances?

*Mr. Joshi:* They may form a group.

*Diwan Bahadur Mudaliyar:* In any case, My Lord, I may not be as good a democrat but I do believe in the stability of a Ministry, and this is as far as I am prepared to go with reference to the stability of Ministries. Other expedients of a more rigid character have been proposed. I think, from the criticism that I have met, that mine is a fairly workable medium, which can be accepted, of an absolute majority being required to turn out a Ministry.

Then, there is sub-clause (c) of sub-head (vii):—

“whether or not a Ministry would be justified in retaining office if, on any given matter, they are accorded the support of one Chamber but denied that of the other.”

We have already suggested the expedient of a Joint Session where there are clashes like that; and if that is to be fully followed, it does not matter if one Chamber denies support to the Ministry while the other Chamber gives support to the Ministry. These conflicts will be dissolved by Joint Session; and, the vote of no-confidence being a joint vote of the two Houses, this proposition will not present any very serious difficulties.

Therefore, My Lord, in the first place, I contemplate joint responsibility of the Ministers; in the second place, I press for the stability of the Ministry; and, in the third place, I suggest that they should be removable from office on a vote of no-confidence by a bare majority. Of course, I do not exclude the possibility of a Cabinet resigning otherwise than on a vote of no-confidence. They

may feel that their position with reference to the Legislature is getting so difficult that they may voluntarily vacate office. They may not wait for the motion of no-confidence. I am only suggesting the obligatory measures that are required for the vacation of office by a Cabinet, and at the same time I must enter a caveat against this position. It ought not to be open to the Governor-General to dismiss a Cabinet otherwise than on a vote of no-confidence. It ought not to be open to the Governor-General to say that, although a vote of no-confidence has not been passed against the Cabinet by the required majority, still he does not think the Cabinet possesses enough confidence with reference to the Legislature, and, therefore, that it ought to vacate office. These are the two possibilities I wish to avoid; first, that the Governor-General should not dismiss his Ministers by his own wish; and secondly, that the Ministry may have to resign of its own volition, apart from a vote of no-confidence carried in the manner that I have suggested.

*Sir Tej Bahadur Sapru:* Lord Chancellor, I confess that, in speaking on the various questions which have been occupying the attention of the Committee since yesterday afternoon, I feel somewhat handicapped. First of all, I feel handicapped because, in dealing with a big question of a constitutional character, you cannot very reasonably and logically divide that question into so many parts and deal with each part separately, irrespective of its relation to the entire whole. Secondly, because I feel that we covered the ground, more or less, on the last occasion, and a whole scheme of responsibility at the Centre was placed by some of us, including my humble self, before the Conference last year. Views were expressed on both sides of this Federal Structure Committee either in support of the scheme which was formulated by me or against that scheme; but I mean no disrespect to the Government of the day here when I say that, so far as they were concerned, they never favoured us with their conclusions of a definite character last year. My Lord, it has frequently been said in English politics that India ought not to be treated as a party question. Luckily or unluckily—you can take it either way, according to your own point of view—is so happens that to-day I hope I am right in interpreting the results of the General Election when I say that you have got, or are going to get, a National Government; and if a National Government means anything, it means a Government of all parties. I am entitled, therefore, to expect that this newly elected Government will have a National mind, and, if I may say so, a broad mind on this question.

Well, I do not really think that the time has come when some lead in this matter should be given by those representing the Government and other members of the British Delegations. I admire Mahatma Gandhi for the very wise and philosophic rule of silence which he has adopted on Mondays, but I should not admire the Government or British Delegation were they to follow Mahatma Gandhi's example all the days of the week! I therefore expect that, at some time or other, the Government will assure us that

they have got a mind of their own on this matter—that they have made up their mind and that they are prepared to disclose this mind. Frankly, I do think that, so far as we Indians on this side are concerned, we have kept nothing up our sleeves. Whether we agree among ourselves, or whether we do not agree among ourselves, whether our position is right or is wrong, we have frankly put forward our views in regard to responsibility at the Centre; and I do think that we should meet with a satisfactory response on this question at some time or other in the course of this week, or possibly next week.

Now, My Lord, we are discussing the various questions which were indicated by Your Lordship yesterday, minus certain forbidden questions. It seems to me rather difficult for any one of us to speak on the questions, the discussion of which has been permitted, without either directly or indirectly going beyond the limit prescribed. I will obey Your Lordship's behest of yesterday to the best of my ability; but I can only preface what I have to say by one observation, namely, that when we are talking of the position of the Army Member, or of the position of the various Members which will form the Cabinet, what is really at the back of our mind is responsibility at the Centre. I draw Your Lordship's attention to question No. (vi), which you permitted us to raise and discuss yesterday, and which runs as follows:—

“What is to be the relationship of the persons appointed by the Governor-General to assist him in the administration of the ‘Reserved’ portfolios . . . .”

The moment you turn to that word “reserved,” it implies that there are going to be some portfolios which are not of reserved character. Then the question goes on:—

“ . . . . to (a) the Legislature? (Are they, for example, to be, or become, members of one or other Chamber, with the usual rights as such to speak and vote, or are they merely to have the right to speak in either Chamber, with no power to vote?); (b) the Council of Ministers? (Are they, for example, to attend all meetings of Ministers, or only when directed to do so by the Governor-General?) ”

Similarly, the various other questions which have this morning been discussed with such great ability by my friend, Diwan Bahadur Mudaliyar, also imply that, without directly raising the question of responsibility, we are really proceeding on that assumption. If we are not proceeding on that assumption, then I would respectfully venture to submit that all this discussion is meaningless and insignificant.

Now, My Lord, I will take up the questions which have been prescribed by Your Lordship and which have been laid open to discussion. Take, for example, question No. (vi): “What is to be the relationship of the persons appointed by the Governor-General to assist him in the administration of the ‘reserved’ portfolios in regard to the Legislature . . . .” and in regard

to the Council of Ministers? Now, the whole underlying basis of this question is that there will be certain portfolios—we will call those portfolios X and Y—which will be held by Ministers not of a popular character. In other words, these Ministers shall not be responsible to the popular vote, but shall be responsible for the conduct of their affairs to the Crown or to the Governor-General. It may be a very anomalous position, but this is the position that we contemplated at the last Session of the Round Table Conference; and, facing that anomaly, we have got to ask ourselves—how can we fit in these two official Ministers—or non-popular Ministers, to use a better expression—with the entire scheme which postulates that the rest of the Ministers shall be responsible to the vote of the Legislature? That is really the meaning and significance of this question. Now, so far as the scheme contemplated the existence, or rather the continuance for the period of transition, of certain subjects which Your Lordship has called Crown subjects, I, at any rate, stand by that. That was my view last year, and that continues to be my view this year.

But there were two questions which I raised last year, and which, with Your Lordship's permission, I shall try further to elucidate this morning. One is, if these Ministers, who will be in charge of "reserved" portfolios, will owe their appointment to the Governor-General and will be responsible to him, what exactly will be their position in the Cabinet? I ventured to point out last year that it would be most unfortunate, and from a practical point of view undesirable, if we were to divide our Ministers for the purposes of Cabinet work into two classes. In other words, I suggested, and I do not suggest again, that we should insist upon unity inside the Cabinet, unity to be achieved with difficulty, but still always to be aimed at; and for that reason I suggested, and I do suggest, that, although these Ministers in charge of the "reserved" portfolios will owe responsibility in the technical sense of the term to the Crown, yet inside the Cabinet I should make no distinction between them and any other class of Ministers. I should permit them to come into the Cabinet, to take part in discussion of subjects generally, and not to confine themselves only to subjects within their own portfolio, to vote inside the Cabinet whenever occasion may arise for voting, and then, when they go into the Legislature, to present a united front to the Legislature. I think that, so far as the questions relating to these "reserved" portfolios are concerned, these Ministers will, to a very great extent, be responsible to the opinion of the Legislature; but occasions may arise when, consistently with their duty to the Crown, they may find it difficult to be responsible. When such occasions arise, I contemplate that an adverse vote of the Legislature on matters within the purview of those portfolios shall not mean that those two Ministers will be necessarily thrown out. At the same time, I do contemplate that, when there is an adverse vote recorded by the Legislature against the Ministry as a whole, on any matter which is within the exclusive jurisdiction of the Legislature, then the whole Ministry—on the principle that the Executive must be a united Executive—will go

out of office. It may be open to the Governor-General, when he comes to appoint a new Ministry, to re-appoint the official Ministers or the non-popular Ministers, or to appoint some other persons; but the essential feature of it is this, that from the very start we must ask the Cabinet to work as a single unified and unitary Cabinet inside the charmed circle of the Government and also in its relation to the Legislature. Now, some people criticise this scheme as amounting to dyarchy. I do not wish to enter into any controversy—if it does please them to characterise it as dyarchy, well, let them indulge in that criticism. But in its essence it is not dyarchy. There are some vital points of difference between dyarchy, as conceived by the authors of dyarchy, and as actually worked in practice, and the system which I suggested last year.

My Lord, dealing with the question of the Ministers in charge of the Army portfolio and the portfolio of External Affairs, there are one or two observations which I would like to make. You cannot completely envisage to yourselves the functions and duties of the Ministers in charge of these portfolios unless you discuss the bigger question of the Army policy and the bigger question of External Affairs. Now, there are many things connected with the Army which, in my humble opinion, could be safely transferred to the control of the popular Legislature, while there are other things which it would not be safe to transfer at the present moment, but which may be transferred after a few years. I refrain from going into those questions because I do hope and believe that some day or other, before this Conference is over, the National Government and Your Lordship may give us a chance of raising the bigger issue with regard to the Army and with regard to External Affairs. Meanwhile, I will content myself by pointing out that the true, legal and constitutional position with regard to the Army in India is that the Army is maintained by the Crown. You may look into the provisions of the Government of India Act from the beginning to the end, but you will not find anything more than a reference to the appointment of the Commander-in-Chief, or rather to the position of the Commander-in-Chief in relation to the other Members of the Executive Council. That is not consistent with responsible government. The Army is absolutely independent of the vote of the Legislature. This is exactly the position that obtains there, and unless you have a definite provision regarding the constitutional, legal and financial position of the Army in India, I venture to think that the position of this Army and your Army Minister will not be a very enviable one in the future. Therefore, if we want to discuss exactly the position, the functions, the duties and the responsibilities of the Members in charge of these portfolios, we have got to discuss those questions independently and arrive at certain conclusions.

Will Your Lordship be pleased to turn to Section 33 of the Government of India Act? You will find that Section says:—

“ Subject to the provisions of this Act and rules made thereunder, the superintendence, direction and control of the

civil and military government of India is vested in the Governor-General in Council, who is required to pay due obedience to all such orders as he may receive from the Secretary of State."

I will invite Your Lordship's attention, by way of comparison, to certain sections in the Australian Constitution. Take, for instance, Section 61, which says:—

"The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth."

You will have to have something of that kind in the Indian Constitution ultimately, though for the time being, consistently with the scheme which I have just foreshadowed, possibly the Governor-General will owe a certain amount of responsibility to the Secretary of State during the period of transition. It must be distinctly understood, however, that that cannot be a permanent feature of the constitution.

Now, My Lord, I will say no more about the Army, as I hope to have a further opportunity of doing so if you decide to give us an opportunity of discussing the bigger question of the Army. I shall then wish to say a great deal more on questions connected with the Army; but, at the present moment, I will not deal with the position of the Army Minister in any greater detail.

With regard to the Minister in charge of External Affairs, my friend, Diwan Bahadur Mudaliyar, has said that there is a great deal in the portfolio of foreign affairs which could easily be transferred to popular control at the present moment. With that general observation and with the details concerning it, to which Diwan Bahadur Mudaliyar has referred, I am in entire agreement.

My friend, Diwan Bahadur Mudaliyar, made one observation with regard to the personnel of the Ministers who will be in charge of the portfolios of the Army and Foreign Affairs. He said that, so far as the Army is concerned, it should from the very start be placed in charge of a non-official member of the Indian Legislature. I ventured to make the same suggestion in a somewhat different form last year. I said that I would leave it to the discretion of the Viceroy to select a non-official member as Member in charge of the Army portfolio, though I would prefer that he started by selecting an Indian member of the Legislature. I am quite prepared to go as far as Diwan Bahadur Mudaliyar has gone to-day, and I do suggest that, if our men are to acquire knowledge and experience of Army affairs, it is better that they should make a beginning now than that you should start them after ten or fifteen years, or that you should use the absence of experience on our part as an argument against advance in that direction.

As regards the Foreign portfolio, my friend suggested that, so far as the Foreign portfolio is concerned, it might continue for

some time to be in the hands of an official Member. Personally speaking, I would make no rigid rule even in regard to that. I would leave ample discretion to the Governor-General, though I hope that, in order to give a chance to Indians to acquire knowledge of foreign affairs, the Governor-General would use his discretion—if not immediately, after a few years—and employ Indian talent in regard to those matters also.

I will now pass on to the question of the number of the Ministers. Here again, I feel it difficult to discuss the question of the number with any degree of certainty. At the present moment, we can only roughly say what will be the subjects of administration which will have to be divided among the Members of the future Executive of the Government of India. I do not think the number of ten, suggested by Diwan Bahadur Mudaliyar, is extravagant. Probably, in course of time, the number may have to be increased; but to begin with, I should be quite content with anything like nine or ten. That, of course, pre-supposes that we shall have, before we finish our work, come to a definite understanding as to what will be the subjects within the control of the Government of India, and what will be the subjects within the control of the Provincial Governments.

I do think that, if Law and Order are transferred to the Provinces, the work of the Home Member of the future will be considerably reduced.

*Sir Sultan Ahmed* : Are not Law and Order already Provincial subjects?

*Sir Tej Bahadur Sapru* : Yes, but they are not absolutely transferred subjects.

*Sir Muhammad Shafi* : Law and Order are already Provincial subjects.

*Sir Tej Bahadur Sapru* : That is what I am saying but they are reserved. You know as well as I do that the Home Department of the Government of India is very busy from morning to evening in controlling Law and Order in the Provinces.

*Sir Muhammad Shafi* : They have what may be described as provisional jurisdiction.

*Sir Tej Bahadur Sapru* : You are at cross purposes with me. You are thinking that I am raising a communal issue. I am doing nothing of the kind. I am as strong an advocate of the transfer of Law and Order to the popular control as you are in the Provinces. What I am saying is that, once Law and Order are transferred to the Provinces, the position of the Home Member of the future will be very different from the position of the Home Member at the present moment.

*Sir Muhammad Shafi* : It is with reference to that statement of my learned friend that I remark that Law and Order are already Provincial subjects. No doubt, the Home Member has a certain measure of control; but that is an entirely different matter. In



the classification of subjects, Law and Order are already Provincial subjects.

*Sir Tej Bahadur Sapru* : I am not denying the very patent fact that Law and Order are Provincial subjects; but that is not enough. They must be not only Provincial subjects, but they must be transferred subjects—that is to say, they must be subjects which will come under the control of a popular Minister. If that is so, I venture to think that Sir Muhammad Shafi will agree with me that the duties of the Home Member of the Government of India will practically come to an end so far as Law and Order are concerned. Therefore, the Home Member of the Government of India, being relieved of a great deal of work in connection with Law and Order, will probably apply himself to many other subjects relating to the internal administration which will be within the control of the Federal Government; and it is for that reason that my friend has properly given him the appellation of a Minister of the Interior.

I will not say definitely what the portfolios should be until I know what are the subjects which are going to be assigned to the Federal Government; and I should leave the formation of the portfolios to the future Prime Minister, in consultation, probably, with the Governor-General of the day. But there is one thing here on which I want to be as explicit as I possibly can. If there is to be a Ministry in charge of certain portfolios, I expect that that Ministry will pursue and act upon the principle of collective responsibility, which, in my humble opinion, means that there will be a Prime Minister who will submit the names of his colleagues to the Governor-General of the day. If this is not what is meant by responsibility at the Centre—if what is really aimed at is that the Governor-General should be at liberty to select his Ministers belonging to different groups of political thought and different political parties—then I, for one, do not envisage the future with any degree of hope.

*Mr. Zafrullah Khan* : Sir Tej, may I ask which subject you are now discussing?

*Sir Tej Bahadur Sapru* : I am discussing those questions generally.

*Mr. Zafrullah Khan* : They are questions in which we are concerned as representing the Muslims.

*Sir Tej Bahadur Sapru* : I am discussing the question that was discussed by Diwan Bahadur Mudaliyar—sub-head (v).

*Mr. Zafrullah Khan* : We shall have to re-consider whether we can take part in any part of this discussion at all, because some of it relates to matters which raise communal issues.

*Sir Tej Bahadur Sapru* : I am discussing sub-head (v) (b)—“Is this responsibility to be collective?” Well, if it is not to be collective, then I submit, for one—I have a very strong feeling in this matter—that you will have the same experience repeated at the Centre as you have had in the Provinces—one Minister going

one way and another Minister going another way, without there being any nexus of political allegiance and political party to unite the two.

Now, My Lord, I pass on to the other questions which were discussed by my friend, Diwan Bahadur Mudaliyar. He said—and this is also what I submitted last year—that the one principle which we ought to aim at, in building up the constitution of the future executive government of the Government of India, is that there must be a fair degree of certainty and stability about our Executive. I entirely endorse that. The principle of stability has been sought to be enforced in post-war constitutions in various ways. I ventured to quote the Czechoslovakian model last year in my speech, and I suggested that, whenever there was a question of no-confidence to be raised, we might either follow the Czechoslovakian model of requiring one-third of the members of the Legislature to notify their vote of no-confidence, and that question being handed over to a special Committee of the Legislature to report, or, if we were not prepared to impose that limitation at the beginning, we might provide for a special majority by which the Executive might be thrown out. I am perfectly well aware that this latter part of my suggestion has been very strongly criticised, and by none more than by the Indian Liberals. Well, so far as I am concerned, I am unrepentant; and I do think that, having regard to the new experience that we are going to have, and having regard to the fact that, for the first few years, or possibly for the first fifteen or twenty years, party demarcations in India will not be so clear—personal issues will be mixed up with public issues, there will be many other extraneous considerations coming in—it is far more desirable that we should accept the principle of a special majority for the extension of the life of the Executive than that we should leave it to a simple majority. It is for that reason that I suggest it. I never committed myself to the number—two-thirds, three-quarters, one-third, or anything of the kind. What exactly that majority will be is a question which can only be determined when we know the exact numerical strength of the Legislature, the character of the Legislature, the functions and the powers of the Legislature. On that point, My Lord, I see no reason to modify my opinion, although I have paid the most respectful attention and consideration to the criticism that has appeared on that point in India.

Again, coming to the question of absolute majority or simple majority, which was raised by my friend, I personally think that, from a practical point of view, the question will not be one of very great importance. Once you accept the principle of a special majority, or once you accept the Czechoslovakian model of referring the vote of no-confidence previously to a Committee of the House, the question of absolute or simple majority seems to me to lose all importance. But if our friends here would be more contented with a simple majority on the lines suggested by some of them, I would not object to that.

There remains only one more question for me to deal with. That is the question which has been very frequently raised in India, and to which reference was also made this morning by my friend, the Diwan Bahadur. It has been asked whether, under the constitution upon which we have been working since last year, we contemplate the representatives of the Indian States taking part in matters which will be of a purely British Indian character. This question was also discussed last year, and I believe I am right in saying that His Highness The Maharaja of Bikaner and His Highness The Nawab Sahib of Bhopal referred to that more or less in the course of their speeches. They said that, so far as they were concerned, they were not anxious at all to take part in matters which did not relate to them or in matters which affected British India alone; but where the question of the extension of the life of the Executive was concerned, they would claim a voice in this matter, for the very obvious reason that the Government would belong to them as much as it would belong to British India. Now, My Lord, I do not think that that is a matter which need very seriously disturb the peace of our minds. I believe there is a sort of convention which has grown up in the House of Commons which has a bearing on this. I think a convention has grown up in the House of Commons that, on the Scottish vote, there is no voting by English Members.

*Sir Samuel Hoare* : I am sorry to contradict Sir Tej Bahadur Sapru, but that is not so. What usually happens in the case of the Scottish debates is that the English Members take a day's holiday from the House of Commons; but there is no convention that English Members do not vote on the Scottish Estimates. Where the convention comes in is in the case of the Standing Committee for Scottish questions. As Sir Tej knows, there are several Standing Committees of the House, and one of them is a Scottish Committee; and on that Scottish Committee there are only Scottish Members. Actually, on the floor of the House, however, any Member may take part.

*Sir Tej Bahadur Sapru* : Is not the effect of your taking a holiday that you refrain from voting? You do not send your votes by post or telegram when you take a holiday?

*Sir Samuel Hoare* : No, we do not, but we refrain from voting rather because we wish to take a day off than because we feel we should not take part in the Scottish debate!

*Sir Tej Bahadur Sapru* : Well. I hope that our friends from the Indian States are sporting enough to take holidays on those days when we are discussing questions in which they are not directly interested, so that a convention may grow up similar to that of the Scottish Committee. That is what I had in view. Therefore, constitutional purists in India, who criticised this part of the scheme on the ground that the representatives of the Indian States will secure a whip hand or become a dominant factor, and therefore will have a voice in our affairs while we shall not have one in theirs, forget that there is a good deal in the written consti-

tution which can be supplemented by the growth of healthy conventions and understandings. That is all I had in view, and that is what it seems to me to be perfectly reasonable to aim at.

*Mr. Sastri* : I did not quite follow Sir Tej Bahadur Sapru. Does he intend this voluntary abstention, on the pretence of a holiday, to apply to votes of no-confidence on British Indian matters or to apply all round?

*Sir Tej Bahadur Sapru* : I am afraid that is not what I intended or had in mind. My point is really this, that on all other matters the ordinary Parliamentary procedure will be in full force; but, when it is a question of turning out the Executive by a special vote of no-confidence, then in regard to that matter, and that matter alone, I would give the Indian States a voice, because the Government is as much theirs as ours.

*Mr. Sastri* : You would give a definite voice, then?

*Sir Tej Bahadur Sapru* : Even on purely British Indian subjects. My answer to the criticism is that votes of no-confidence are not of daily occurrence. If they were, then, of course, you could not run your responsible government.

*Mr. Joshi* : Then how does the question of a holiday arise?

*Sir Tej Bahadur Sapru* : On other questions.

*Mr. Sastri* : On other questions you would not bar them out by rule—you would only leave it to a convention?

*Sir Tej Bahadur Sapru* : Yes, to a convention.

*Mr. Sastri* : I wish to ask Sir Samuel Hoare whether every English Member takes a holiday on the days when the Scottish Vote is taken, or whether certain English Members remain and take part in the debate and vote.

*Sir Samuel Hoare* : I could not say categorically that they do not take part, because a few of them do, and certainly there is no distinction in the Rules of the House between a Scottish Debate and any other. Any Member is entitled to take part if he wants to.

*Mr. Sastri* : On questions of no-confidence there is a definite understanding that vote may be given, but in the other cases it is to be left to convention. Why should there be a convention on one side and a rule on the other?

*Sir Tej Bahadur Sapru* : My answer to that is that it would not be fair for either section of the House to turn out a common Executive by itself. It must be with the consent of both sections.

*Mr. Joshi* : You are proposing that they should have statutory power to vote on all subjects?

*Sir Tej Bahadur Sapru* : Yes.

*Mr. Joshi* : If that is so, you need not provide specially for giving them a vote in the case of a motion of no-confidence?

*Sir Tej Bahadur Sapru* : I am envisaging the possibility and the probability of a convention growing up on that point. So far

as the statute is concerned, I would not divide the members of the Legislature into Class A and Class B. I would leave it to the good sense of the members not to interfere in matters which do not relate to their part of India.

*Mr. Iyengar* : Do you contemplate a similar convention to grow up that where questions involve a British Indian issue, the Indian State representatives might well be indifferent as to how the Ministry is turned out?

*Sir Tej Bahadur Sapru* : So far as the question of the extinction of the life of the Executive by a special vote of no-confidence is concerned, I make no distinction between the two halves of India; but in regard to other matters . . .

*Dr. Ambedkar* : Would you mind specifying some of the matters?

*Sir Tej Bahadur Sapru* : Central subjects; the Penal Code; the Civil Procedure Code; Income-tax. There are many things which do not relate to the Indian States.

*Dr. Ambedkar* : You mean ordinary legislation?

*Sir Tej Bahadur Sapru* : Yes.

*Sir Muhammad Shafi* : May I put a question to Sir Tej? Supposing there is a vital measure relating to British India before the Legislature . . .

*Sir Tej Bahadur Sapru* : Relating to British India alone?

*Sir Muhammad Shafi* : Yes——and the Indian States' representatives are on a holiday when that measure is being discussed. Supposing, on that vital measure, the Ministry is defeated—the Legislature rejects the measure. What will be the position?

*Sir Tej Bahadur Sapru* : I am afraid you did not listen to me. I said, in regard to all other matters, I would leave the ordinary Parliamentary procedure to remain in force. For instance, never mind whether they are present or not; if a Ministry is defeated on a vital question, then it is not a matter of their being turned out by a vote of no-confidence. It is a matter of their good sense, and they have got to resign.

*Sir Muhammad Shafi* : In that case, my learned friend draws a distinction between a Ministry having to resign on a vote of censure (if such a vote is passed) and its having to resign if it is defeated on a vital question?

*Sir Tej Bahadur Sapru* : Yes. That has been the basis of my argument, from the beginning.

*H.H. The Nawab of Bhopal* : May I make the position of the States quite clear? They are not at all keen or anxious to vote on any matters which are the concern of British India.

*Sir Tej Bahadur Sapru* : That was my impression, and I hope I represented Your Highness's view correctly.

*Mr. Zafrullah Khan* : Supposing this convention which you want is actually established. Do you contemplate that, on those

particular days on which British Indian questions are being discussed, those representatives of the States who happen to hold portfolios will still be present and defend their point of view?

*Sir Tej Bahadur Sapru* : Yes. The Executive is quite different. Therefore, My Lord, I really see no difficulty. If the utmost limit to which the criticism can go is that it is anomalous—that it is not perfectly logical—my answer is very simple. No constitution, written or unwritten, could bear the test of a strictly logical examination. What we want really is a workable constitution, and not a constitution which, from an ideal point of view, would be treated as a democratic constitution.

My Lord, I believe that, on the questions which were thrown open by Your Lordship for discussion, I have said everything I want to say; but there will be many more points which will arise when the bigger question which has been reserved, if I may say so, and which is still a Crown subject so far as the discussion is concerned, is thrown open. When that reservation is removed, then, probably, I shall have to say a great many things more which would be out of place at this particular moment; but before I conclude, I wish again to repeat my warning that the whole discussion of these permitted questions proceeds on the assumption that there is to be responsibility at the Centre. Otherwise I do say, with great regret, that we shall find at the end that we have been indulging in a solemn farce.

*Mr. Zafrullah Khan* : May I say a few more words by way of explanation? Speaking entirely for myself, I realise the difficulty of discussing piecemeal certain sub-heads that are intimately connected with each other. I therefore quite sympathise with those speakers who have given expression to that difficulty, and I can quite understand that, in spite of their best efforts, they have not been able so to divide their submissions as to confine them entirely within the limits of those sub-heads that we felt could be discussed without raising the communal question. One also feels the difficulty with regard to time, which is a very great consideration indeed; and one does not wish in any way to obstruct the work of the Committee. On the other hand, one has one's own difficulties, and one has one's own mandate and the wishes of one's colleagues, apart from those who actually sit round this table, to consider. It has been amply demonstrated, in the two very learned speeches that have been made, that the discussion even of certain sub-heads of Head 6 is not possible without some direct or indirect reference to other questions with regard to which we are not at present able to make our submission; and if that difficulty has arisen on one side, there is a corresponding difficulty which I personally feel—and I am not speaking for anybody else—and it is this, that even for me, then, it would be difficult to make my submission on certain sub-heads of Head 6, even if I wanted to confine myself to those without trenching on other subjects with regard to which it is not possible to submit a considered opinion at the present stage.

That being the difficulty, and there also being my anxiety to make my contribution towards the discussion of these subjects, I wish to make this statement—that on the whole of the subject which is now under discussion I shall certainly claim my right to make my submission; and yet I cannot make it with any profit or use until after those questions which relate to the minorities have been one way or the other settled.

*Sir Samuel Hoare* : Lord Chancellor, Before we break up for luncheon, I wanted in a sentence or two to remove one or two of Sir Tej Bahadur Sapru's apprehensions. He seemed to think that we Members of the Government are under a perpetual vow of silence—that we have followed Mr. Gandhi's example so sympathetically that we are silent not one day of the week but every day of the week! I can assure him that we have undertaken no such obligation; but I do venture to say that I thought his implied criticism this morning was not altogether justified. He seemed to think that we Members of the Government ought to come down here and state categorically our position upon the many details that we are discussing. That has never been my view of the position of the British representatives upon this Committee. First of all, there are a number of these details upon which there must be latitude of opinion amongst every section of the Committee. It is quite clear from the discussions this morning that a complicated question of this kind bristles with points of detail, upon which there may be a latitude of view even amongst one or other Member of the Government. Moreover, today he seemed to think that, in the course of the next two or three days, we should come here and express our views not only upon these details, but upon the general question of reserved subjects—subjects that we are not discussing this morning, so far as I understand. Speaking for myself, I certainly accept the position that, some time or other, the Government will have to state their view upon these very important issues, such as the issues connected with Crown subjects; but I do say that, to ask us to do it in the course of the next two or three days, when the new Government has scarcely been formed, and when in this Committee we have not to-day even reached those subjects, is making upon us rather an extreme demand. What I do say to him is that, upon the earliest possible opportunity, no doubt, we shall discuss these questions; and when that time comes we shall obviously have to take a part in them and express our views. But, so far as to-day is concerned, I think, if we tried to do so, first of all, it would be out of order, and, secondly, the opportunity has not arisen.

Perhaps I may add to that, with reference to the details that we have been discussing, that my own view in a sentence or two is that a great many of the questions that we have been discussing this morning can only be settled in actual working. All these questions as to what should constitute a vote of censure; whether it should be a particular percentage of the two Chambers or not; questions, again, as to which section of the Assembly should take

part in particular kinds of debates; questions, again, as to the stability of the Ministry. I think it is very interesting that we should have discussions of this kind, but I myself am quite sure that they will really only be settled in the actual working of the constitution when the constitution is started. It is extraordinarily difficult for us, I think, to dot the i's and to cross the t's when these are really subjects much more of the practice of the constitution than they are of the theory of the constitution.

With reference to the bigger question that has been raised this morning, namely, the distinction between the representatives of the Crown subjects and the other Ministers, I venture to suggest it is much better really to deal with the facts as they are and to recognise the fact that, in the transitional period—I purposely say “in the transitional period”—there is definitely a distinction between these two classes of people; and, if there is a distinction, it is much better not to pretend that there is no distinction. The representatives of the Crown subjects will not be advising the Governor-General as will be the case with the other Ministers; they will be under the directions of the Governor-General. That seems to me to make a very definite distinction between the two, and I would suggest to members of the Committee that it is really better to keep in view these actual facts, rather than to try to gloss them over and to make it appear that there is a kind of collective responsibility when there is not, and that they are Ministers just like any other Ministers.

When I say that, I should like to safeguard myself to this extent. I cannot imagine that, in the working of the constitution, there would be an irremovable gulf between these two classes of people, and that on the one side the Ministers responsible to the Assembly would go their way, and that on the other side the officials responsible to the Viceroy would go their way. I imagine, rather, that these people, being practical men and dealing with things as they are, will work an arrangement of that kind, in the transitional period, much more by consultation between the two sides than by attempting to create a theory as to their identity which does not seem to me to really exist.

No doubt we shall discuss facts of this kind in greater detail when we come to discuss what are called the broader issues of reserved questions; but I venture to put that observation before the Committee this morning because I think we had much better face these facts and deal with them as facts rather than, as I say, try to create a theory that does not apply to the circumstances.

*(The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.)*

**Mr. Joshi :** Lord Chancellor, I wish to say a few words about the responsibility of the Ministry to the Legislature. The first point to which I wish to refer is the proposal made by Diwan Bahadur Mudaliyar—that the Ministry should be responsible to the two Houses jointly. That proposal does not find favour with me.



I feel, Lord Chancellor, that if we are going now to get a responsible government in India, that government should be responsible to the common people of India. Although we may have a Second Chamber in India, properly constituted, nevertheless the Executive Government must remain responsible only to the popular Chamber. Otherwise, it will not be a government responsible to the common people, but it will be a government responsible to some persons who are not really representatives of the people. I consider that the Upper House will not be representative of the people. As a matter of fact there are proposals that, in the Upper House, there should be 50 per cent. of the members who will represent not the people but the Princes; and there are proposals supported by Sir Maneckjee Dadabhoy that there should be a large proportion of representatives of the capitalist classes.

*Sir Maneckjee Dadabhoy* : I never said that.

*Mr. Joshi* : I consider, Lord Chancellor, that a real popular government should be made responsible only to the popular Chamber.

The next point which I wish to touch upon is the question of the majority by which the Executive Government should be turned out. Mr. Mudaliyar proposed that there should be an absolute majority which should compel the Executive Government to resign office. Sir, I quite appreciate the desire of some members to secure the stability of the Executive Government, but I feel they will not secure the stability of the Executive Government without making very large sacrifices by the devices which they have proposed. If you provide, in order to secure a stable Government, that an ordinary majority in the House should not suffice, but that you should have an absolute majority of members voting, I think you may secure stability to some extent; but you will secure the stability of an Executive Government which will not command the respect of the Legislature or the respect of the country. If a Ministry has not got a majority in the House and cannot get its legislation passed, cannot get its supplies voted, and still remains in power, I do not think it will command the respect of the members of the Legislature. It will not even get the respect of the people in the country. I have myself seen, in the present Provincial Legislatures, Ministers holding office but not having the respect of the members of the Legislature or of the country. Ministers proclaim in the Legislatures their policy. They are defeated on the principles of that policy. In order to keep up their office they bow to the decision of the Legislature. What does that mean? Does it mean that their principles were not very dear to them, that they did not approve of those principles, but that, in order to keep up their job, or, if I may say so, to keep in office, to keep up their power, they accepted a principle which only a little time before the discussion they considered to be a wrong principle? I therefore feel, Lord Chancellor, that if we try to secure the stability of the Executive by such devices, we shall not get a Ministry which commands the respect of the country and of the

Legislature. I am therefore in favour of the Ministers resigning as soon as they find that they have not the confidence of the Members who vote.

Lord Chancellor, while Diwan Bahadur Mudaliyar was speaking, I placed before him certain figures showing the position of certain parties—showing that, under certain circumstances, a group of members of the Legislature may not vote, and on account of a group of members not voting a smaller group may remain in power. It is quite possible that in India our members of the Legislature may be divided according to some principles—questions regarding tariffs may come forward. Those who are free traders will not like tariffs; those who are in favour of protection will like tariffs; but there may be some people who are indifferent to tariffs. These people may not vote on certain occasions. If, because a certain group of members does not vote, you keep up a Ministry consisting of a smaller group in the House, in my judgment you are giving your Executive Government to a smaller group, and it will cease to be a representative Government. I was not thinking, when I asked the question, that members may not vote because they are merely indifferent to voting, but that they may be indifferent as to which party should form the Government, and in that case may not vote. If you made a rule such as that the majority of members must vote in order to turn out a Ministry, you may keep a smaller group in power. I consider that is an undesirable thing.

In order to avoid what Diwan Bahadur Mudaliyar called the passing whims and fancies of the Members of the Legislature, I am quite prepared to accept some kind of provision which will prevent a vote of no-confidence being moved merely for vexatious purposes. You may make a rule that, before a vote of no-confidence is allowed to be moved, there should be a certain proportion of Members present showing themselves in favour; but even that number must be a small number. Lord Chancellor, the right of moving a vote of no-confidence is utilised, not only for turning out the Ministry, but as a preliminary measure for discussing measures of policy. You perhaps may know that in Great Britain votes of no-confidence or motions to that effect are moved, not because the opposition feels that the Government will be defeated or that there is the slightest chance of the Government being defeated on that motion, but a vote of no-confidence is moved in order that the Legislature should have an opportunity of discussing the policy of the Government.

I therefore feel that, if you make a provision that one-third of the Members of the Legislature—not even one-third of the Members present—must signify their assent to moving a vote of no-confidence, you will deprive the Legislature of a valuable right of discussing the policy of the Government. I would therefore put that number at a very small figure, in order to prevent one, two or three people only taking advantage of their right to move a vote of no-confidence for vexatious purposes. But, as soon as you find that there is an appreciable group in the House—it may be a small

group, but an appreciable group, in the House—who want to discuss the policy of the Government on an important measure, the vote of no-confidence should be allowed to be discussed.

Then, the question was raised as to the representatives of the States being allowed to take part in a vote of no-confidence on British Indian matters; and it was said that they should be allowed to take part in such a vote. I do not feel that this is the right attitude to adopt. We are anxious that there should be no difference in the Federal Government between Central British Indian matters and Federal matters. I, for one, am very anxious that all matters which will be within the purview of the Federal Government shall be Federal matters; but, if the States insist that certain subjects may be made Central so far as British India is concerned, but should not be made Federal, then I feel that the States should really have no voice, either by convention or by statute, in discussing votes of no-confidence on the administration of British Indian matters, because I feel that, by that means, the States will be able to control the policy of the Government on matters which are purely British Indian. The Ministry may refuse to carry out the policy dictated by the Legislature in a Central subject which is purely British Indian, and, if the Members of the Legislature do not want an Executive Government which will not carry out their policy, then they have no remedy if the States can take part in the vote of no-confidence and can keep the Ministry in office. Sir Tej Bahadur Sapru said that the reason is obvious, namely, that the States which take part in the Executive Government should have a voice in turning out the Executive Government. The reason is obvious to me so far as Federal matters are concerned, but it is not obvious to me why the States should help in keeping in Office a Ministry which refuses to carry out the policy, dictated by the Legislature, in Central subjects which are of purely British Indian interest. It is true that the Members of the Legislature who represent the States will have to resign along with the other Members; but, if they are elected Members, they will be responsible to their constituencies, and they will be returned again if their constituencies consider their policy to be right. If, on the other hand, they are Members who are nominated by the Princes, the Princes may nominate them again. If the next Prime Minister wants the same people as Ministers in the next Ministry, they may again be taken; but the Princes cannot claim to keep a Ministry in power which refuses to carry out the policy, dictated by the Legislature, on British Indian matters. I therefore feel that no right should be given to the States to take part in the discussion of a vote of no-confidence in a Ministry on a purely British Indian matter.

I do not wish to speak on the other points raised by Diwan Bahadur Mudaliyar in dealing with this subject.

*Sir Maneckjee Dadabhoy* : My Lord, I confess that I am labouring under the same difficulties as my predecessors who have spoken on the subject, on account of these various heads being so.

intrinsically interlocked and interdependent one on the other, in the elucidation of many problems connected with the discussion of the subject under sub-head (vi) of Head 5. I will endeavour, therefore, only to speak on matters which are free from any such interdependence, and on which I can add something useful in the smallest possible way to this debate.

Your Lordship has permitted, in the first instance, a discussion on the subject as to the relationship of the persons appointed by the Governor-General to assist him in the administration of the reserved portfolios, as stated in sub-clauses (a) and (b). My Lord, for the purpose of this discussion I shall assume that, so far as has been previously settled, Defence and External Affairs will be reserved subjects. It is only on that hypothesis that we could base any discussion on this matter. I understand that Your Lordship probably will allow at a later stage a further discussion on the subject of Defence, as asked for by my friend, Sir Tej Bahadur Sapru; but at present it would be convenient to assume the recommendation of the Federal Structure sub-Committee—that both Defence and External Affairs are, for the time being, to be regarded as reserved subjects.

My Lord, I must congratulate Diwan Bahadur Mudaliyar on the ability and lucidity with which he has placed his case before this Committee.

*Chairman* : I quite join myself with you in that remark, if I may be allowed to do so.

*Sir Maneckjee Dadabhoy* : I always listen to Diwan Bahadur Mudaliyar with great pleasure because one can be quite certain that he will be always clear on the subject and that one will know exactly what he means. As I understand the situation, My Lord, at the discussion last year it was settled that the Army Member should be appointed by the Viceroy and not chosen by the Prime Minister of the new Federal Government. But there was a great measure of discussion and conflict of opinion on the question whether he should be selected from the elected Members of the Legislature, or whether he should be an official and in that capacity be appointed as the Army Member. If, My Lord, the decision arrived at then was that these two subjects—Defence and External Affairs—should be “Reserved” subjects and should be in the hands of the Governor-General, it is somewhat difficult to understand the position taken up by my friend, Diwan Bahadur Mudaliyar, that he should be a man elected from the Federal Legislature. In this connection, My Lord, I draw your attention to the Report of the Defence sub-Committee, paragraph 3, page 61 :—

“ The sub-Committee also recognised that, in dealing with the question of Defence, it was not possible to overlook that a factor that must govern all considerations of the subject was the responsibility of the Crown through the Committee of Imperial Defence, which body was ultimately responsible for examining all these problems. It was realised that the

responsibility of the Committee of Imperial Defence was not something that was special to India, but was common to the Empire as a whole."

If this was the deliberate decision of the Defence sub-Committee, it seems to my mind somewhat impossible to reconcile the position that, in future, the Army Member should be chosen from the elected Members of the Federal Legislature. It is true that my friend, the Diwan Bahadur, has not confined the choice to the representative Chamber only, but has also gone to the extent of stating that the choice may be made from either House; but, My Lord, my difficulty is that, if the responsibility remains with the Governor-General, it seems to be a little bit unfair to ask that the selection should be made from the elected members of the Federal Legislature. If a good and proper and capable man who had some knowledge of military problems was available, I would welcome the selection of such a member from the Federal Legislature; but as long as the responsibility remains with the Governor-General, it is natural that the Governor-General should place a man of his choice in that appointment, and it would seem arbitrary to curtail that choice of appointment. I would therefore impose no restriction or limitation, but would leave the matter entirely to the discretion of the Governor-General. If he likes, he can make a selection from the elected members of either House; or if he likes, he can appoint a military man; or he can appoint an outsider who is not even a Member but who would afterwards become a Member of the Legislature. I think it would be reasonable to concede this position if Defence and External Affairs are going to be reserved subjects exclusively in the hands of the Governor-General and subject to his ultimate and final decision.

Then, My Lord, in this connection I would also like to add that it would be safer, at least for the first few years, that this task should be in the hands of a competent military man; and I lay stress on this, that it would be advantageous and in the ultimate interests of India if the Army Member for some years to come were a military man. I know fully well that, in England, the Secretary of State for War is not necessarily a military man or belonging to the military service. Likewise I am perfectly well aware that, in other countries, he is not necessarily a military man. I fully appreciate the sound argument which was advanced by Diwan Bahadur Mudaliyar that ultimately, at some stage or other, Defence will become a non-reserved subject, and therefore you should train men up so that eventually they will be able to undertake successfully those duties. I do not know whether I have understood the position rightly. I myself attach a great value to giving training and military instruction to our men, and I think there is a great deal of cogency in the argument advanced by the Diwan Bahadur.

*Sir Sultan Ahmed* : You will not get military instruction.

*Sir Maneckjee Dadabhoy* : I mean knowledge; I do not mean drilling. My Lord, I personally think that, under the Army

Member, some Members of the Indian Legislature must be appointed who would remain under the Army Member during the period of transition for the purpose of acquiring that knowledge.

*Mr. Joshi* : Under-Secretaries.

*Sir Maneckjee Dadabhoy* : As Parliamentary Under-Secretaries. I would suggest, therefore, the same scheme as suggested in the Montagu-Chelmsford Reforms as regards the appointment of Parliamentary Under-Secretaries in various Departments. At page 183, paragraph 224 of the Montagu-Chelmsford Report the subject is dealt with. As it is essential—as it is a very small paragraph and will not take much time—with your permission, My Lord, I will read it:—

“ The suggestion has been made to us that in some Provinces it might be convenient, where the press of work is heavy, to appoint some members of the Legislative Council, not necessarily elected, to positions analogous to that of a Parliamentary Under-Secretary in Great Britain, for the purpose of assisting the members of the Executive in their Departmental duties and of representing them in the Legislative Council. We feel no doubt that the elaboration of the machinery which is inevitable in future will impose greater burdens on the Members of the Government. We suggest therefore that it may be advisable and convenient to take power to make such appointments.”

The power which it was recommended should be obtained was in connection with the Provinces; but I see no objection to this analogy being carried to the Government of India, and the Parliamentary Under-Secretaries being appointed for the purpose of training Indians in these difficult subjects during the transition period. If that is done, it will on the one hand solve the question and prevent any encroachment on the discretion, choice and power of the Governor-General, and on the other hand it will lead to the attainment of that knowledge and instruction which we all so earnestly desire.

Now, My Lord, it is to my mind perfectly clear that, as long as subjects remain reserved, though we may all thoroughly dislike it, some distinction is inevitable between the Army Member and the other Members of the Federal Executive. At the same time, I am distinctly of opinion that the Army Member should be allowed to associate as far as possible with the other Members of the Federal Executive, in order to be in constant touch with the other Members of the Federal Executive, so as to have opportunities of knowing and understanding the sentiments and the desires and the policy of the other Members of the Federal Executive. It would therefore be advantageous, I think, that he should take part in all the Cabinet debates. In matters which lie exclusively within the discretion of the Governor-General, however, he might express his opinion and give his views to the Executive, and he can answer questions put by the other Members of the Executive in order to

elucidate knotty problems involved in any particular question, and in order that the Executive may have the full advantage of hearing the Army Member, though they may not ultimately have a final voice in the decision which the Army Member in consultation with the Governor-General and under his directions, would finally decide to take. It would also enable the Governor-General, before making his final decision, to know the views of the other Members of the Federal Executive, and that would help the Governor-General in the final decision he would have to make in connection with that matter.

Now, if the appointment of the Army Member is made by the Governor-General, I am firmly of opinion that he should hold a seat in one of the Chambers, and he must on other matters also have a right to vote, like his colleagues on the Federal Executive. If he is in one House, he must simultaneously have a right of audience in the other House, but he would not be entitled to vote in that other Chamber. In fact, it would conduce to the success of the new Federal Government if the Army Member were allowed to be present at the time when every question is debated and to take part in the discussion of every matter.

With regard to the question whether the Members of the Cabinet should be confined to the Lower House or should be selected by the Prime Minister from both Houses, I am definitely in favour of the choice not being limited to the Lower House. If the Prime Minister thinks there are deserving and capable men in the Upper House . . . . .

*Mr. Joshi* : Deserving?

*Sir Maneckjee Dadabhoy* : Yes; if the Prime Minister thinks there are capable and deserving men in the Upper House, he should be at liberty to make his choice from the Upper House also. In fact, it would be absurd to tie the hands of the Prime Minister in a matter like this. I do not know whether I correctly understood Diwan Bahadur Mudaliyar, but I believe he also was not in favour of limiting the choice to one House only.

My Lord, I am entirely in disagreement with the proposition expounded by my friend, Mr. Joshi, that the States should have no voice, either by statute or by convention, in British Indian matters or also in the question relating to the vote of no-confidence. My Lord, we are starting this Federation, which is a new and novel one, with the idea of taking the Princes completely with us and meriting also their confidence in our work. We want them to associate with us more and more, and to come into closer and closer contact with the other Units of the Federation, so that the whole Federation may work in harmony and in peace, without friction, without jealousies and without any troubles. I cannot see any logic, or any great point, in the argument that the States should be debarred from participating in these matters. We are not going to put any pressure on the States that they must vote, or that they must abstain, or that they must discuss a matter; but if they choose to

discuss a matter and to express their opinions upon it, by all means let them have the right to do so.

*Mr. Joshi :* May I ask a question of Sir Maneckjee Dadabhoy? If a Ministry refuses to carry out the policy of the Legislature in a Central subject for British India, what is the remedy to the Legislature?

*Sir Maneckjee Dadabhoy :* You give them a holiday on that day.

*Mr. Joshi :* Give a holiday to whom?

*Sir Maneckjee Dadabhoy :* The States.

*Mr. Joshi :* Yes.

*Sir Maneckjee Dadabhoy :* I say, why force a holiday on them? If they are not interested, they will not take part in the debate.

*Mr. Joshi :* It is not a question of not being interested in a debate. They may be interested in keeping in a Ministry which refuses to carry out the policy of the Legislature.

*Sir Maneckjee Dadabhoy :* Well, I disagree with you. And, especially—are not the States generally interested either in the retention or the removal of the Federal Executive? Have they not the same interest as the other Units as to whether a particular Executive has become obnoxious and ought to be removed or not, or is dangerous to the peace of the country, or is otherwise unfit to carry on its work? Why should they not have a voice even in all such matters? I am unable to understand either the cogency of the argument, or even its logic.

Now, My Lord, the Diwan Bahadur has referred to the Foreign portfolio as well as to the portfolio relating to External Affairs, and having divided the foreign affairs into two compartments—one the position of Indians in the Dominions, and the other the position of Indians in other parts of the British Empire (by which I understood him to mean Crown Colonies)—he has argued that we should reserve some control over these matters also, though technically they may be foreign affairs. I agree with Sir Tej Bahadur Sapru that, unless we know exactly what the details of these matters are—what subjects will be regarded as foreign, it is difficult to express any definite opinion on the subject; but so far as immigration and other matters are concerned, our laws provide sufficiently and adequately for the health, employment and the safety of the immigrants.

As regards the statement that we are now having Trade Commissioners appointed in various parts of Europe, and that external matters also should be under some control of the Executive, though it looks a very attractive proposition, I am afraid it might land us in difficulties. I do not know what the sphere of External Affairs is going to be, and it is therefore not possible for me to express any definite and explicit opinion on the subject.



Then, My Lord, as regards sub-head (ii) of Head 5, the important question is, what is to be the numerical strength of the Federal Executive. The Diwan Bahadur has pointed out that in South Africa the numerical strength is ten as a maximum, and he has shown his predilection in favour of the Australian model, where initially a fixed number is provided for, but power is given, under Sections 64 and 65 of the Act, to the Federal Legislature to increase the numerical strength. Finally, the Diwan Bahadur has urged that the maximum of ten would be a reasonable figure, including the "Reserved" subjects. He has divided the subjects under different groups which we have all heard. My apprehension is that the policy of incurring heavy expenditure of a recurring nature is unnecessary for India.

*Chairman:* Would you mind just repeating that? I did not quite catch it.

*Sir Maneckjee Dadabhoy:* My submission, My Lord, is that the expenditure in connection with the maintenance and establishment of the Federal Executive should not be allowed to overstep the limits of ordinary prudence and economy. The Montagu-Chelmsford scheme made the administration, not only in the Provinces, but in the Government of India, top-heavy. It involved excessive expenditure. The work that the Governors in the Provinces, with two members of the Executive, were formerly doing, was done afterwards in some Provinces by five members of the Executive Council, who were provided besides with two or three other Ministers. I feel that the financial situation in the near future is going to be somewhat critical; and as the revenues of India will not yield large sums of money or permit of a policy of extravagance, as has been done in the past by the Provincial Governments or Government of India, it will be necessary to limit our expenditure to a great extent. It will therefore be prudent in the first instance to make the Federal Executive not a very large body, but a body such as is actually required for the carrying on of the work. I do not see why the present number of the Government should not be adhered to. My friend, the Diwan Bahadur, has said that, owing to a combination of portfolios being under the supervision and control of one individual, difficulties have arisen and Provincial Governments have become extravagant. The Diwan Bahadur also cited a concrete instance, stating that the Finance Department or the Financial Member of the Government of India, being in charge also of tariffs and customs, whenever he fell short of money, had a great inducement and temptation to raise Customs duties; and from his experience he argued that such a policy was an obnoxious one. I quite realise that there is a great deal of force in what the Diwan Bahadur has said; but if that argument were logically carried to its furthest extreme, what would be the result? Where a man can take charge of and have under his control half a dozen subjects, the same argument will hold good, and you will have to create for each subject a special portfolio. Therefore, My Lord, the portfolios which he described are, in my

opinion, somewhat superfluous and unnecessary. I would now give Customs and other things to the Finance Department. Railways and Public Works can easily and should, in my opinion, be left to the person who holds the portfolio of Trade and Commerce. The Minister of the Interior can safely hold the portfolio of Justice. I therefore think it is not necessary to have so many Ministers but that we should limit the choice.

Now, My Lord, for the integrity of our service, for the maintenance of the dignity of the new Executive, I think they should all be placed on a footing of equality as regards their salaries. I am not in favour of reducing the salaries of some Members and placing them in a position of disparity as compared with others. I do not think it would be conducive to the interests of India. It might be misinterpreted and the position and influence of such Members drawing smaller salaries may, in the minds of ignorant people, be affected by their salaries being lower. It may be thought that they do not occupy as high a position as others in the Executive. I do not know what salaries we are going to fix for the new Federation; but, whatever salaries you are going to fix, I am certainly of opinion that all the Members of the Executive should be placed on a footing of equality.

Now, My Lord, with regard to question (v) of Head 5, which deals with the question of the responsibility of Ministers to the Legislature, the Ministers must necessarily be responsible to the new Federal Legislature. The question has been raised whether their responsibility should be joint and collective. I may at once say that I am in favour of collective responsibility. We have seen from our experience of the working of the dyarchical system in the various Provinces, that where joint responsibility was not given there have been failures and friction. No Ministry has survived for long, and the administrative machinery on the whole has suffered. In the new Federation, at least so far as all the Members of the Executive, with the exception of the Members for the reserved subjects, are concerned—who in my opinion cannot be brought within the sphere of collective responsibility—there should be wholly collective responsibility; and all the other Members of the Federal Executive should be held responsible for the acts of omission and commission and other actions of individual Members. Unless there is that collective responsibility there will never be sufficient incentive to work together, to harmonise their thoughts, to harmonise their differences and to come to a definite agreement on all important matters.

With regard to the Army Member and to the person who will hold the portfolio for External Affairs, they will be under the direct control of the Governor-General; and I cannot see how we can extend the principle of collective responsibility to those Members. They would be entirely under the orders and control of the Governor-General, whose decisions they would be bound to carry out. It is, therefore, not possible to impose on them

this collective responsibility, which ordinarily is essential for the unification of the policy of the Federal Executive.

The question has been raised as to how the Federal Legislature is to enforce responsibility, and I understand there have been some differences of opinion on this matter. The ordinary method is by a vote of no-confidence. The Diwan Bahadur, who inaugurated this debate, has in this connection recommended that a vote of no-confidence, if it is moved, should have the support in the first instance of a certain number of members, and that members of both Houses should sit together and should decide the question by an absolute majority. There is the other view that, under ordinary circumstances, a bare majority would be sufficient. If the recommendation of the Diwan Bahadur—that both Houses should meet and dispose of the question—be adopted, then, in my opinion, there is not much danger of the real issue being lost sight of by the combined Legislature; and in my view it is highly unlikely that they will arrive at a wrong decision. In that case, I think, a bare majority, or a sufficient majority, would be quite ample. I do not see, My Lord, any special reason why, when the two Houses of the new Federal Legislature meet together, and, consisting of men, as they will be, of ability, learning, knowledge and experience (and I come now to the question put to me by my friend Mr. Joshi), they cannot be trusted completely in this matter. They are not all likely to go wrong. If they are likely to go wrong—if they are not men of sufficient standing and ability to decide such a question—then I say that we do not deserve a Federation at all. If we cannot trust the members of these two Houses, then I ask, why trust the administration of the country to them? I am therefore strongly of opinion that a bare majority will be adequate.

My Lord, I will not trouble the Committee any further. There are many other matters on which I would like to speak, but I am afraid they are so much interconnected with the other questions that I should be trespassing upon the injunction laid down by Your Lordship if I were to do so. At the same time I reserve my right to speak at a later date when these other points are discussed.

*H.H. The Nawab of Bhopal:* Lord Chancellor, I wish briefly to indicate our views on the questions raised by you. The first question deals with the appointment of the Federal Ministers. As the basis of Executive power is vested in the Crown, as represented by the Governor-General, we think that the procedure suggested in paragraph 9 of the Second Report of the Federal Structure sub-Committee, as it follows the constitutional precedent in the Dominions under the Crown, may be adhered to. The appointment of these Ministers should, in our opinion, be made by the Governor-General in consultation with the Prime Minister.

With regard to question (ii), that is, the number of Federal Ministers, we think that no specific limitation need be laid down. The Federal Ministers should be as few or as many as circumstances

demand, and the authority to determine and modify the number of Ministers should be with the Governor-General acting in consultation with the Prime Minister.

In regard to the question of the representation of Indian States in the Federal Executive, whatever my own views may be, the majority of the Indian States Delegation feel that the representation of the States in the Federal Executive should be secured by a constitutional convention. It is felt that it should not be left solely to the discretion of the authority appointing the Ministers, or to the Parliamentary strength of the group representing the States. We, however, agree that no statutory provision is necessary in this connection, for all that my colleagues ask is that the convention should be firmly established and that every Ministry should contain representatives from the States. The question raised in sub-head (iv), therefore, does not arise.

In regard to the question of the responsibility of Ministers raised in sub-head (v), we agree in general with the view expressed by the British Indian Delegates. The Ministers will be responsible to the Legislature in the sense that (1) they will be accountable for their actions; (2) they will continue in office as long as they enjoy the confidence of the Legislature; and (3) the Legislature may have authority to dismiss a Ministry, not enjoying its confidence, by a direct vote of censure. The responsibility of the Ministry should be collective. This is the essence of Cabinet Government. Whether collective responsibility should be recognised and expressed in the constitution, is a different question. If, as we have postulated, there is to be a Prime Minister, and his colleagues are selected by the Governor-General in consultation with him, then, I believe, the collective responsibility of the Cabinet follows automatically, and, in my opinion, need not be expressed specifically in the constitution. I should like, however, to make it clear that, by accepting the principle of collective responsibility, the representatives of the States who may be on the Federal Executive do not desire, as far as they are concerned, to be placed in the position of having to participate in the decision of purely British Indian Central subjects, if there be any such subjects.

With regard to sub-head (vi) also, we hold that the Ministers in charge of the Crown subjects should have the right to attend Cabinet meetings. They should be members of one or other of the two Houses, with the right to speak in both but voting only in the House of which they are members.

The question as to when a Ministry can be said to retain or to have lost the confidence of the Legislature, justifying its continuance in office or resignation, should be left to constitutional usage and practice. If a Cabinet cannot enact legislative measures which it considers important, or cannot get supplies voted, it will, I suppose, have to resign. It is for the Ministry itself to judge whether it can carry on the King's Government. Personally, I

hold that no special provision is necessary. Whether a Ministry would be justified in retaining office if, on any given matter, they were accorded the support of one Chamber but denied that of the other, is a different question. It depends almost entirely on what the matter is. If a Bill, which a Ministry considers vital, is thrown out by one House and does not secure the necessary majority in a Joint Session, and if the Ministry considers it an essential part of its programme, it will no doubt resign. We agree with Diwan Bahadur Mudaliyar that the decision should be by an absolute majority of the two Houses, but we do not wish to press the point and would accept the agreed views of British India in this matter. We have accepted the co-ordinate character of the two Chambers, and therefore, generally speaking, a Ministry would have to secure support from both Houses; but support or opposition of a particular measure, unless it is declared to be a question of confidence, does not necessarily show that the House in which the opposition to that measure is powerful has lost confidence in the Ministry. So far as the participation of the States in the discussion of Central affairs is concerned, the Indian States Delegation has stated its views clearly and definitely—they do not wish to participate in it.

In regard to this subject, I crave your indulgence for a few minutes to express my views in some detail. Though, My Lord, they are only my personal views, I feel that I shall have the support of some, and perhaps of a large number, of my colleagues on this subject. My colleagues on the other side are well aware that I myself, and most of my colleagues on the Indian States Delegation, for reasons well known, have not been so far in favour of the creation of an Indian States bloc. By the same process of reasoning, we are opposed to a confederation of British Indian Provinces. As long as there are Central subjects we fear there will be one solid bloc of British India always dominating the Federal Legislature; and the ideal which you, Lord Chancellor, so eloquently put forward, of having no two Indias in the future, will become unreal from the very beginning. I am therefore convinced that it will be detrimental to the best interests, both of the Federation as a whole and of the Indian States, to have two lists of subjects of common concern, one Federal and the other Central. In the first place, My Lord, it will be unfair to British India that we of the States, whilst claiming immunity from interference in our internal domestic affairs, should in any shape or form have any voice in the internal affairs of purely British Indian Provinces, whether in regard to legislation or policy, or the passing of a vote of no-confidence in connection with any of the subjects proposed to be Centralised, resulting in the resignation of the Cabinet. We do not ask for it. Secondly, My Lord, I am personally of the view that, if the list of Central subjects is retained, it will only be natural if it acts as an incentive to the Federal Government to extend its sphere of jurisdiction and desire to exercise similar authority in respect of Indian States. We do not want this either.

The process of levelling down in the case of the States may irresistibly follow. We have all along made it clear that we do not wish to be levelled down to the status of British Indian Provinces as they are to-day. We shall, of course, welcome the levelling up of the Provinces; but I am afraid it will not be possible for us to agree to the levelling down of the States. This has been one of the fundamental conditions which you, My Lord, know the States have all along laid down. If there is to be federation, the whole problem will have to be considered with the sole object of creating completely autonomous and internally independent Provinces for the purposes of federation. This, I am convinced, would make our Federation real, stable and more easy to work. If, however, My Lord, this could not be done at once, I should like to make our position clear. We are neither anxious nor desirous to have anything to do with the affairs concerning British India alone. We realise the difficulty regarding the vote of no-confidence resulting in the resignation of the Federal Executive, and I do hope that some solution of this problem will be found, which will avoid the necessity of our having to interfere in any matters whatsoever with what may be purely British Indian affairs. As long as this is not done, I think we shall probably take a holiday on these occasions.

*Mr. Joshi:* I should like to know from His Highness what is exactly the meaning of the words "constitutional convention."

*H.H. The Nawab of Bhopal:* As it develops and grows, the convention may grow that our representatives should be on the Executive. That was the idea.

*Mr. Joshi:* Not statutory?

*H.H. The Nawab of Bhopal:* Not statutory. I made that clear.

*Mr. Joshi:* There may be a majority in the Legislature holding, for example, free trade views. Will the representatives of the States, if they are nominated officers, be allowed to have political views, such as free trade views or protectionist views; and if they are not allowed to hold political views on matters of policy, how can they enter a Ministry and that Ministry become a homogeneous one? I see some difficulty in representatives of the States being Members of the Executive when the Executive is to consist of people holding definite views on politics.

*H. H. The Nawab of Bhopal:* Our view is that we do not think any Government would like to leave the States out and not have them represented on the Executive. Moreover, the representatives of the States, if they are appointed to the Executive, will have no connection whatsoever with the States themselves. They will have their policy according to their own views, and have nothing to do with the policy of a State or a group of States.

*(The Committee adjourned at 4 p.m.)*

THE FOLLOWING NOTE WAS HANDED IN BY RAO BAHADUR KRISHNAMACHARI.

I have been asked to state the views of the Indian States Delegation on the questions coming under Head 6.

Q. (1) As you have pointed out in your Note, under the present Government of India Act, both the Central and Provincial Legislatures can legislate as to all matters and subjects, the only difference being that provincial legislation does not extend beyond the Province. We think that generally such a system is incompatible with and should not continue under the Federal Constitution we are contemplating. As the future Federal Government will have authority only in such matters concerning the States as are expressly delegated to it by them, its legislative competence would be limited by the scope of that delegation. It is only by a close adherence to this principle that we can ensure the smooth working of the constitution and the maintenance of the sovereignty of the States in the spheres in which sovereignty has not been delegated by them. It is, therefore, necessary that the legislative powers of the Federal, and State and Provincial Legislatures should be clearly defined in the constitution.

Q. (3) The States accept the principle laid down in the First Report of the Federal Structure sub-Committee that the enactments of the Federal Legislature, acting within its legal scope, should have full force and effect throughout all Units in the Federation, and agree that consequently Acts of the Federal Legislature relating to Federal subjects shall apply *proprio vigore* to the territory of the States which are members of the Federation.

Q. (4) In the case of Federal subjects the administration of which is reserved by the States or vested in them, we are of opinion that the States should have the power of concurrent legislation. This would be a very useful provision from the point of view of enacting rules and orders, and, may be, regulations in the nature of additions consistent with the Federal Statutes, so as to make the local administration of the subjects conformable to local conditions. Such powers of concurrent legislation are found in Federal Constitutions, and we are particularly thinking of such powers as are provided in Articles 6, 7, 12 and 13 of the German Constitution. The States are anxious to retain such a power; and as any concurrent or subsidiary legislation will only be valid so far as it is consistent with Federal law, it is desirable that such power should be reserved to them.

Q. (5) We have answered the question of concurrent legislation from the States' point of view. The States will retain their full sovereign rights to legislate exclusively for their subjects and territories as regards all matters except those in regard to which they have delegated powers to the Federal Government; and they will retain powers of concurrent or subsidiary legislation with regard to Federal subjects the administration of which is in their

hands. It should be provided that Federal law should over-ride State law and State law should be void to the extent of its repugnancy to Federal Statutes.

Q. (6) The strict delimitation of powers is an essential feature of a true Federation, and so far as the States are concerned they are of opinion that the question of *ultra vires* should be left exclusively to the Federal Court.

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PROCEEDINGS OF THE FORTY-FOURTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE, HELD ON THE 2ND NOVEMBER, 1931, AT 11-0 A.M.

*Discussion on the Draft Third Report.*

*Chairman:* Your Highnesses and Gentlemen, the draft Report of this Committee on the Legislature and on Federal Finance was circulated on Saturday, in accordance with the undertaking that was given to you last week. I had hoped to circulate at the same time a draft Report on the Federal Court, but we were not quite able to get it ready.

I need not remind you, because I am sure it is very present to your minds, that the greater the measure of agreement here the more likely it is that the Bill before Parliament will have a smooth and unanimous passage. I cannot say anything more about that; but it is obvious that, if the suggestions come with the almost unanimous support of this Committee and of the Conference, they must carry great weight with all political parties both in India and in England.

I do not propose to conclude my remarks without breaking a tradition. I am rather fond, personally, of breaking traditions. It is a rule that the Civil Service in England does its work anonymously. They are most invaluable guides, and we are only too thankful to have the benefit of their experience. If I may be allowed to say so, rather in lighter vein, I think you will find, when you get your own Civil Service, that nineteen times out of twenty the Civil Service is right. On the twentieth time, you had better get your own way whether you are right or not.

I wish to place on record here the names of the gentlemen who have enabled us to produce this Report; and not only this Report, but the various Heads of discussion and the various memoranda which have been circulated from time to time during our meetings. In the early part of this year these gentlemen formed a small committee, and they have been working early and late—I think I might certainly say every week and I might also say every day—upon Indian affairs. Really, their knowledge is encyclopaedic. I want to have the names of these gentlemen placed upon the record in order that, in future, the proper thanks of the people who come after us may be given in the right quarter. The gentlemen whose names I desire to mention, and who have been

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most invaluable assistance, and without whose help and advice certainly I could not have presided, are as follows:—

Sir Claude Schuster,  
 Sir Maurice Gwyer,  
 Sir Findlater Stewart,  
 Sir Edward Chamier,  
 Mr. King,  
 Mr. Carter,  
 Mr. Dawson,  
 Mr. Patrick.

I make bold to say that, when the future history of India is written, the thanks of the people who will benefit by it will be far more due to these gentlemen than they are to any of us sitting round this table.

I now propose to read through the Report and then to come back to each paragraph.

*(The Chairman then read paragraphs 1—51 of the draft Third Report.)\**

*Introductory.*—The Committee's task at the Second Session of the Conference was to continue their discussions at the point at which they were left by their Report of 13th January, 1931, and by the Prime Minister's Declaration of 19th January, and to endeavour, so far as possible, to fill in the outlines of the Federal Constitution for Greater India which was sketched in those documents.

2. In approaching this task the Committee have been assisted by colleagues who did not share in their earlier deliberations. In this connexion it will be remembered that in virtue of an agreement recorded in March last the Indian National Congress decided to participate in their labours.

3. Since January last there has been much public discussion of the constitutional proposals which emerged from the last Session of the Conference. The Committee resumed their deliberations with the knowledge of this public discussion, and with the conviction that it is in a Federation of Provinces and States that the solution of the problem of India's constitutional future is to be found.

4. A further examination of the problem has confirmed them in the belief that by no other line of development can the ideal in view be fully realised. For this purpose it is essential that the "India" of the future should include along with British India that "Indian India" which, if Burma is excluded, embraces nearly half of the area and nearly one-fourth of the population of the country—an area and population, moreover, which are not self-contained and apart geographically or racially, but are part and

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\* These paragraphs, as amended in consequence of the ensuing discussion, are printed as paragraphs 1—51 of the Third Report of the Federal Structure Committee, *see* pp. 931—943.

parcel of the country's fabric; and its constitution must be drawn on lines which will provide a satisfactory solution for the problem of the existence side by side of future self-governing Provinces and of States with widely varying politics and different degrees of internal sovereignty whose fortunes are, and must continue to be, closely interwoven.

5. The Committee rejoice to think that the Princes, while rightly determined to maintain their internal sovereignty, are prepared, and indeed anxious, to share with the British Indian Provinces in directing the common affairs of India.

6. It will be easy for the constitutional purist, citing Federal systems in widely different countries, to point out alleged anomalies in the plans which the Committee have to propose to this great end; but the Committee, as they stated in their First Report, are not dismayed by this reflexion. Their proposals are the outcome of an anxious attempt to understand, to give full weight to, and to reconcile, different interests.

7. The Committee have taken into account

(a) the widespread desire in India for constitutional advance;

(b) the natural desire of the Indian States to conserve their integrity;

(c) the indisputable claims of minorities to fair treatment;

(d) the obligations and responsibilities of His Majesty's Government; and

(e) the necessity, paramount at all times, but above all at a transitional period like the present, when the economic foundations of the modern world seem weakened, of ensuring the financial credit and the stability of Government itself.

8. Without a spirit of compromise such diverging interests cannot be reconciled; but compromise inevitably produces solutions which to some, if not to all, of the parties, may involve the sacrifice of principle.

9. It follows that in many cases, many members of the Committee would have preferred some solution other than that which appears as their joint recommendation. But recognising that the basic aim of this Conference is, by the pooling of ideas and by the willingness to forego individual desires for the common good, to attain the greatest measure of agreement; above all recognising that the time has come for definite conclusions, the Committee are prepared to endorse the conclusions set out in this Report.

10. *The structure, size and composition of the Federal Legislature.*—The Committee expressed the view in their previous Reports that the legislative organ of the Indian Federation should consist of two Chambers, which will be empowered to deal with the whole range of the activities of the Federation, both those which affect

British India only, and those which affect all federal territory. In the course of their discussions preferences were expressed in some quarters for a unicameral Legislature, on considerations alike of simplicity, efficiency and economy; while some members urged that, having regard to the nature of the matters to be dealt with by the Federation, a single small Federal Chamber, which would adequately reflect the views of the Governments of the constituent Units, would be the right solution of the problem.

11. At a later stage again the Committee was placed in possession of proposals which they have not been able fully to discuss, but which clearly demand further consideration, though the Committee fully realise that the adoption of either of these plans would involve material modification of the framework hitherto contemplated.

12. One of these plans would substitute for the Upper Chamber a small body consisting of nominated delegates of the governments of the federating Units, which would have the right of initiating legislation and would be empowered to exercise a suspensory veto over the measures passed by the elected Chamber. This body would also have the right to express its opinion upon all measures of the Federal Government before they were laid before the elected Chamber. The authors of this plan also contemplate the possession by this body of certain advisory functions in the administrative sphere.

13. The second of these plans contemplates the confederation of the States into a single collective body for the purpose of federating with the British Indian Provinces. Its supporters would prefer a single Federal Chamber in which the representation of the Indian States collectively should be 50 per cent., the representatives being selected by an electoral college consisting of the federated States as a whole. In the event of a decision in favour of a bicameral Legislature, 50 per cent. of the seats in the Upper Chamber would be reserved for the States, their representation in the Lower Chamber being on population basis.

14. Upon the assumption, however, that the Legislature is to be bicameral, a variety of factors must be taken into account in determining the size of the Chambers. Cogent theoretical arguments can be adduced (and were in fact advanced by some Delegates), in support of the view that for a country of the size and population of India, a Legislature consisting of from 600 to 700 members of the Lower Chamber and from 400 to 500 for the Upper, could not be regarded as excessive in size, and that smaller numbers would fail to give adequate representation to the many interests which might reasonably claim a place in it. On the other hand arguments no less forcible were adduced in favour of the view that Chambers exceeding 100 to 250 respectively might prove ineffective organs of business. We have given these divergent views the best consideration of which we are capable, and recommend as the result that the Chambers should consist, as near as may be, of 200 and 300 members respectively, in which the allotment of seats

to the States should be in the proportion of 40 per cent., (or approximately 80 seats) in the Upper Chamber, and  $33\frac{1}{3}$  per cent. (or approximately 100 seats) in the Lower.

15. This latter recommendation is, of course, based on the assumption that the whole body of the States will eventually adhere to the Federation. The view was strongly expressed that in the case of States not adhering at the outset seats allotted to them as the result of the procedure contemplated in paragraph 26 should remain unfilled pending their adherence. But it was also urged that this might lead to a situation under which States adhering at the outset could find their total voting strength in the Legislature so small as to be inconsistent with their position as representing one of the main constituent elements of the Federation. Thus in the event of the original adherents not forming a substantial proportion, that is to say, at least one-half, of "Indian India" it will probably be desirable to devise some method of weightage by which their voting strength would be temporarily augmented pending the accession of other States.

16. In any event difficulty might arise in regard to States which are grouped for purposes of deputing a representative, but it would be premature to attempt to suggest the best solution for such problems until the measure of adherence by "grouped" States can be fairly accurately ascertained or foreseen. The Committee accordingly content themselves with expressing the hope that the measure of adherence in each group will be sufficiently great to justify the filling of the seat allotted thereto by the nominations of the adhering States. Should the system of grouping be such as to admit of the allotment of two or more seats to one group, difficulties of this order would be more easy of solution.

17. The Committee recommend that the 200 members of the Upper House should be chosen in the main to represent the component Units—the Provinces of British India and the States—and that the representatives of the British Indian Provinces should be elected by the Provincial Legislatures by the single transferable vote. Candidature for the Federal Legislature should not, of course, be restricted to members of a Provincial Legislature, though such persons should be eligible if otherwise qualified.

18. In the case of those States which secure individual representation, their representatives will be nominated by the Governments of the States. In the case of those States, however (and there will necessarily be many such) to which separate individual representation cannot be accorded, the privilege of nomination will have to be shared in some manner which it will be easier to determine when the various groups have been constituted—a process which will of course, entail a detailed survey of local and regional circumstances.

19. For the Lower Chamber the Committee consider that the selection of the British Indian representatives should be by election otherwise than through the agency either of the Provincial Legis-

lature or of any existing local self-government bodies. Most members consider that election should be by territorial constituencies consisting of qualified voters who will cast their votes directly for the candidate of their choice. Others have advocated some method whereby some of the obvious difficulties which must confront a candidate in canvassing and maintaining contact with so large an area as the average constituency will involve, may be obviated.

20. The actual framing of the constituencies must necessarily depend largely upon the detailed arrangements to be made for the revision of the existing franchise—a task which is to be undertaken by a special Franchise Committee. The Committee therefore recommend that this body should be charged also with the duty of making proposals for the constituencies to return the British Indian members of the Lower Chamber of the Federal Legislature, and that it should explore fully the alternatives of direct and indirect election indicated in the preceding paragraph in the light of the practical conditions which will be presented by the size of constituencies, their populations and the proportion of this population to be enfranchised. The area and population of British India excluding Burma being in round figures 800,000 square miles and 255 millions respectively, and the seats in the Lower Chamber available for representatives of that area on the Committee's proposals being approximately 200, it follows that the average area of a constituency would be approximately 4,000 square miles, and the average population per seat some  $1\frac{1}{4}$  millions. And while in many cases the former of these figures would obviously be reduced by the natural grouping of the population in urban areas, the difficulties presented by electoral areas and populations of this size would, of course, be accentuated by the existence of separate communal electorates. It may well be that while no difficulty will be experienced in providing for direct election in urban areas, some method of indirect election as recommended by the Franchise sub-Committee of the Conference may prove desirable for rural areas.

21. As regards the apportionment of the British Indian seats in both Chambers to the Provinces *inter se*, the Committee recognise that the population ratio, which they were disposed to recommend in their previous Report as the guiding principle, would not produce a satisfactory result unless it were tempered by other considerations. To take only one instance, it would immediately reduce the Bombay Presidency, a Province of great historical and commercial importance, which has for many years enjoyed approximately equal representation in the Central Legislature with the other two Presidencies and the United Provinces, to less than half the representation these latter will secure.

22. For the Upper Chamber, which will represent in the main the Units as such, the Committee think that the guiding principle should be a reasonable approximation to equality of representation for each unit. Absolute equality, having regard to the great varia-

tions in size and population between the Provinces, would obviously be inequitable. The problem is a difficult and complicated one, involving the careful assessment of local factors, which is beyond the competence of this Committee. But the suggestion has been made that a possible solution might, for example, be to assign to each of the Provinces which exceed 20 millions in population, namely, Bengal, Madras, Bombay, the United Provinces, the Punjab and Bihar and Orissa, an equal number of seats, say, 17; to the Central Provinces (if it included Berar) and Assam, say, 7 and 5 seats respectively; to the North-West Frontier Province, 2 seats, and to Delhi, Ajmer, Coorg and British Baluchistan, 1 seat each.

23. In the Lower Chamber, representing as it will primarily the population of the federated area, we consider that the distribution should tally as closely as possible with the population ratio, but that some adjustment will be required in recognition of the commercial importance of the Bombay Presidency and of the general importance in the body politic of the Punjab, which it will be generally conceded is not strictly commensurate with its population as compared with that of other Provinces. We suggest that this adjustment might be secured in the case of Bombay to some extent, at all events, by adequate weightage of the special representation which we have recommended for Indian and European commerce, and, in the case of the Punjab, by some arbitrary addition to the 18 seats which it would secure on the basis of its population. Here again the Committee are not in a position to make a definite recommendation, but they take note of a suggestion which has been made for the allotment to the Punjab and Bombay, and also to Bihar and Orissa of 26 seats each; to Madras, Bengal and the United Provinces, of 32 seats each; to the Central Provinces, of 12; to Assam, of 7; to the North-West Frontier Province of 3; and to the four minor Provinces of 1 each, by this measure securing a distribution of the 200 seats which might be held to satisfy reasonable claims without doing undue violence to the population basis.

24. *Apportionment between the States of their quota.*—The Committee recognise that this is primarily a matter for settlement among the Princes themselves, but the representatives of other interests can hardly regard it as a matter of indifference since, until a satisfactory solution is found, the idea of federation necessarily remains inchoate and an important factor in determining the decision of individual States as to adherence to the Federation will be lacking. In view of the admitted difficulties of the question the Committee are anxious to assist by friendly suggestions towards the consummation of an acceptable and generally accepted conclusion. The Committee are fully aware that the effective establishment of federation postulates the adherence of the major States and that the absence of even a few of the most important States, however many of the smallest might be included, would place the Federation under grave disadvantages. At the same time they think that it is essential

that the States as a whole should secure representation which will commend itself to public opinion as generally reasonable and that it is hardly less important to satisfy, so far as may prove possible, the claims of the small States than to provide adequate representation for those which cover large areas.

25. Two suggestions have been advanced in the course of the Committee's discussions for the solution of this problem—the first that the matter should be entrusted to the Chamber of Princes, with such arrangements as would secure an adequate voice in its deliberations to the small States, and that, if the Chamber failed to secure agreement, the Viceroy should be asked to settle the matter; the second, based on the belief that the inherent difficulties of the problem would prove such that the Princes—acting through whatever agency—would be unable to evolve a plan which would meet with general acceptance and satisfy all claims, and consequently that a procedure based upon the first suggestion would merely involve infructuous delay, was that the task of apportionment should be remitted to an impartial Committee or tribunal on which the States themselves should not be given any representation, but before which they would be all invited to urge their claims.

26. The Committee are not in a position, for reasons already stated, to make any definite recommendation as to the acceptance of either of these suggestions, but they consider that the best course would be to allow a period of time, which should not, they think, extend beyond the end of March, 1932, within which the Princes should be invited to arrive at a settlement on the understanding that, if within that period a settlement were not in fact secured, an impartial tribunal would be set up by His Majesty's Government to advise as to the determination of the matter.

27. *Method of selection of States' representatives in the Lower Chamber.*—While the Committee remain of opinion that this question must be left to the decision of the States, it cannot be contended that it is one of no concern to the Federation as a whole. They note the assurances of certain individual members of the States Delegation that in those States which possess representative institutions, and for which these members were in a position to speak, arrangements will be made which will give these bodies a voice in the Ruler's selection. The Committee as a whole are prepared to leave this matter to the judgment of the States.

28. *Representation of special interests in the Federal Legislature.*—In paragraph 34 of their Second Report the Committee recommended that special provision should be made in the Federal Legislature for the representation of the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce and Labour. We make no recommendation here relating to the first four of these interests, since the decision on this point is one for the Minorities Committee.

29. But we affirm our previous recommendation that provision should be made for the special representation of the Landlord

interest, of Commerce (European and Indian) and of Labour. The number of seats to be assigned to each of these four interests and their apportionment amongst the various Provinces are questions which should be considered by the Franchise Committee, as also is the question of their method of election. Wherever possible the method should be election rather than nomination.

30. *Nominated members.*—In paragraph 34 of the Committee's Second Report the suggestion was also made that the Governor-General should be empowered to nominate to each Chamber a specified number of persons, not exceeding perhaps ten, to represent the Crown. After further consideration, the Committee see no advantage to be gained from pursuing this suggestion. The persons appointed by the Governor-General to assist him in the administration of the Reserved portfolios will, of course, play their part in the business of the Legislature, but it is not apparent how their task would be facilitated by the presence of a small body of nominated members who, if they were non-officials, would rarely possess any special or effective knowledge of questions connected with the administration of the reserved Departments, and whose votes would be too few to influence decisions.

31. If, on the other hand, these members were officials chosen for their knowledge of the subjects in the Governor-General's charge the same difficulty would be experienced as under the present régime of sparing from their departmental duties for attendance in the Legislature so considerable a number of officials as the suggestion contemplates; moreover, the voting power which such officials would exercise would either be negligible or else would tend to maintain an "official bloc" which, in the opinion of the majority of the Committee, would be out of place in the conditions of the new constitution.

32. On the other hand, while the Committee for the reasons given are not prepared to advocate the nomination of members in either Chamber to represent the Crown or Crown interests, they are impressed with the desirability of securing to the Federation the services in the Upper Chamber of men of the elder statesmen type with an experience of public affairs, both in the political sphere and outside it. It may well be that men of this type whom India would delight to honour may be unwilling through the absence of provincial influence or connexions, to solicit the suffrages of Provincial Legislatures, or to promote their candidatures by identifying themselves with particular political parties; and the small chances of success at the polls, when party feeling runs high, likely to be attained by men possessing in the English phrase the cross-bench mind need not be emphasised. Yet it would be a grave loss to India if such men were excluded from her counsels. The Committee are therefore of opinion that a small proportion of seats should be reserved in the Upper Chamber only, for persons to be appointed by the Governor-General. The Governor-General would, in making these appointments, act as a general rule upon the



advice of his Ministers, though we are disposed to think that, possibly by a constitutional convention, possibly by provision in the Constitution Act, two or three of the appointments might be made on the Governor-General's personal responsibility. In order to avoid any suggestion, however, of an official bloc, the Committee are of opinion that no serving official should be qualified to sit in the Upper Chamber as a nominated member.

33. *Qualifications and disqualifications for membership.*—For the Lower Chamber in British India the qualification for membership should be identical with that for a voter, that is to say, any person who is qualified as an elector for a constituency of a particular class should be qualified also to stand for election by any constituency of that class in the Province.

34. But for candidates for the Senate certain additional qualifications should be laid down. Without attempting to prescribe these in detail—a task which would better be undertaken by the Franchise Committee—we consider that the existing rules regulating the qualifications of voters (and consequently of candidates) for the Council of State should be adopted as a model for candidates for the Upper Chamber, except that the minimum age limit should be 35 years.

35. It will be necessary also to prescribe the qualifications of voters in the special constituencies we have recommended to secure the representation in the Upper Chamber of Landlords, Commerce (European and Indian) and Labour: and—subject to the age limit just suggested—a person qualified as a voter in any of the special constituencies should be qualified also as a candidate. Whether, in the case of all or any of these special constituencies, the present qualifications for voters for the Council of State could be adopted as they stand appears doubtful: but this we would leave for the consideration of the Franchise Committee.

36. The existing disqualifications for membership for the Indian Legislature appear to us generally suitable for retention, though there was some difference of opinion as to those arising out of convictions for criminal offences, and suggestions were made—which we regard as impracticable—that a distinction should be drawn for this purpose between “political” and other offences, or between offences involving moral turpitude and those which do not. On the whole we regard a restriction of this nature on the free choice of the elector as of little value as a means of ensuring probity of character in candidates, and we recommend that they should be abandoned. At the same time we consider that the rules should be so framed as to disqualify from candidature any person who at the time of an election is actually undergoing a sentence of detention and who would consequently be unable, if returned, to fulfil his duties to the Legislature and to his constituents.

37. Although it will clearly be impossible to secure uniformity of qualification in British India and the States we think it of great importance that there should be absolute uniformity in the

matter of disqualifications. These should therefore be embodied in the constitution and should apply to all candidates alike.

38. *Oath of Allegiance.*—The Committee consider that, following common practice in the Empire, the Indian Constitution should provide for an oath of allegiance to be taken by members of the Federal Legislature on assumption of their seats. They do not suggest a definite formula at this stage, but its terms will require careful consideration.

39. *Relations between the two Chambers.*—As will appear from paragraphs 26 and 35 of the Committee's Second Report, this important question was discussed for the first time in the Committee's present Session. The careful consideration we have now given to the matter has led us to the view that nothing should be done in the new constitution which would have the effect of placing either Chamber of the Federal Legislature in a position of legal subordination to the other. It would be a misconception of the aims which we have in view to regard either Chamber as a drag or impediment on the activities of the other; in our view the two Chambers will be complementary to each other, each representing somewhat different, but, we hope, not antagonistic, aspects of the Federation as a whole. Absolute equality between the two Chambers of a bicameral Legislature is no doubt unattainable and, if it were attainable, might well result in perpetual deadlock; and there is no less doubt that, the provisions of the constitution, notwithstanding the evolution of political development, will inevitably result in the course of time in placing the centre of gravity in one Chamber.

40. But so far as the letter of the constitution is concerned we consider that there would be no justification for endowing one Chamber at the outset with powers which are denied to the other. We accordingly recommend that while the constitution should provide that, subject to the special provisions to be referred to later, no Bill should become law until it is assented to by other Chamber, it should contain no provisions which would disable either Chamber from initiating, amending or rejecting any Bill, whatever its character. The principle of equality also appears to us to demand that the Government should be entitled to test the opinion of the other Chamber if one Chamber has seen fit to reject a Government Bill, and that in the event of its passage by the second Chamber it should be treated as a Bill initiated in that Chamber and taken again to the first.

41. In the event of rejection by one Chamber of a Bill which has been passed by the other, or of its acceptance by either in a form to which the other will not agree, we recommend that subject to certain conditions which should be set out in the constitution, the Governor-General should have power, either after the lapse of a specified period or, in cases of urgency, at once, to secure the adjustment of the difference of opinion by summoning a Joint Session.

42. We see no reason why the principle of equality of powers should not extend also to the voting of supply. The supply required by the Federal Government will be required for the common purposes of the Federation (or for the common purposes of British India) and there is, in our view, no logical reason which could be adduced in favour of depriving the representatives of the Federal units in the Senate of a voice in the appropriation of the revenues, the responsibility of raising which they will share equally with the members of the Lower Chamber.

43. We propose therefore that the annual estimates of the revenue and expenditure of the Federal Government (which, as we propose elsewhere, should be contained in a single Budget statement covering both Federal and Central revenue and expenditure) should be laid simultaneously before both Chambers, and that that Government's Demands for Grants should be debated and voted upon by each Chamber, the debate in the second Chamber taking place upon the Demands as amended by the first. In the event of a difference in view between the two Chambers as to the amount to be granted under any Demand, we recommend that the difference should be resolved by an immediate Joint Session of both Chambers, the decisive vote being that of a simple majority. The Demands would, of course, be so arranged as to separate expenditure required for Federal purposes from that required for Central purposes, so that the latter might stand referred to a Standing Committee of the British Indian members of both Chambers.

44. *Federal Finance.*—The Committee did not find time during the first Session of the Conference to consider the subject of "Federal Finance" which may be summarily described as the question of the apportionment of financial resources and obligations between the Federation and the Units. On taking up this subject the Committee found it desirable to remit it for examination by a sub-Committee over which Lord Peel presided.

45. The Report of this sub-Committee, which was in effect unanimous, is appended to this Report. Little criticism was directed to its main features and the Committee accept the principles contained in it as a suitable basis on which to draft this part of the constitution.

46. The Committee were, however, not satisfied with the proposals in Lord Peel's Report for a review of the problem by Expert Committees. Fear was widely expressed that these might, by recommending principles at variance with those upon which the Conference was agreed, tend to undo work already accomplished, and further, that the procedure suggested might cause unnecessary and perhaps dangerous delay in settling various points which had an important bearing on the character of the new Federation. The Committee accordingly consider that the suggested procedure should be revised in the manner described below.

47. No change need be made as regards the second of the two Committees (concerned with paragraphs 17—20 of Lord Peel's

Report), except that it should have no connection with the other Committee. It should be noted that, of the matters within the purview of this "States" Committee, it is only in respect of those dealt with in paragraph 18 of Lord Peel's Report that it is essential to reach a settlement before the Act setting up the Federation comes into operation.

48. In place of the first Committee recommended in Lord Peel's Report there should, as early as possible, be appointed in India a "fact-finding" committee consisting of officials familiar with questions of finance, including States' finance. Without elaborating terms of reference the functions of this committee may be sketched as follows:—

(a) To investigate the division of pension charges (paragraph 5 of Lord Peel's Report).

(b) To investigate classification of pre-Federation debt as contemplated at the end of paragraph 6 of Lord Peel's Report.

(c) To calculate the effect on the Provinces of various possible methods (of which there are only a few to be considered) of allocating the proceeds of Income-tax to the Provinces.

(d) To give an estimate of the probable financial position of the Federation in its early years under the scheme proposed in Lord Peel's Report indicating, *inter alia*, the probable results of federalising corporation tax, commercial stamps, tobacco excise, or other possible national excises.

Of these (d) is the most important.

It was pointed out that (b) had no reference to the investigation of any claim such as had been raised by the Congress, that liability for a portion of the public debt of India ought to be undertaken by the United Kingdom.

49. The facts and estimates required from the Committee described in the preceding paragraph should not take long to produce. There will remain to be decided, in the light of them, certain questions as, for example,

(i) The exact detailed form of the list of Federal taxes (within the general framework laid down by Lord Peel's Report); in particular a final decision will have to be taken about Corporation tax and specific Federal excises.

(ii) The initial amount of the contributions from the Provinces and the precise period within which these and the States' contributions are to be wiped out.

(iii) The exact method according to which Income-tax is to be returned to the Provinces.

50. There will also be one or two other points left doubtful by Lord Peel's Committee which will fall for decision. It will be necessary to devise a procedure for discussion and settlement of the outstanding matters.

51. It may be that in other fields points of substance directly affecting Federation will also remain for settlement after this Session of the Conference. It might thus prove convenient to use a common machinery for their disposal. It is accordingly agreed that this question of procedure should be postponed to a later stage.

*Chairman:* That concludes the Report. Now we will go back to the beginning, please.

Paragraph 1.

Paragraph 2.

Paragraph 3.

Paragraph 4.

Paragraph 5.

*Mr. Joshi:* On that paragraph, I suggest that the word in the second line, "rightly," be replaced by the word "naturally."

*Chairman:* I accept that.

No. 6, please.

No. 7.

No. 8.

No. 9.

*Mr. Sastri:* On No. 9—where we say "by the pooling of ideas and by the willingness to forego individual desires for the common good"—I do not think it is satisfactory to ask people to give up their individual desires for the common good. I cannot give up my ideas for the common good, in any case. I might give up my plan, but I could not give up my ideas.

*Sir Samuel Hoare:* Yes, I think it is meant to go the other way. It is "to forego their individual views for the sake of." I think we could make that clear, could we not? Could you do it by transposition of the words—"and by their willingness to forego, for the common good, individual desires"? I think that would meet you.

*Mr. Sastri:* Yes.

*Chairman:* Mr. Sastri is quite right. If I may say so, he often teaches me what good English ought to be.

*Chairman:* "10. The structure, size and composition of the Federal Legislature."

*Mr. Joshi:* I still feel, in view of the proposals made for the constitution of the Second Chamber, that I should adhere to my views that there should be only one Chamber. I should be inclined to make a compromise on that point if I had approved the proposals for the constitution of the Second Chamber. In the first place, I do not yet know how changes in the constitution are to be effected in the future. Secondly, I do not approve that the representatives of the States, in the Second Chamber, should be

selected by nomination. I do not approve, also, of the representation proposed to be given to the Indian States. Lastly, My Lord Chancellor, I do not approve of the Second Chamber because of the equality that it has been proposed to maintain between the two Chambers.

*Chairman:* No. 11, please.

No. 12. We should very much like to hear the details of your scheme, Sir Mirza. It is very interesting.

*Sir Mirza Ismail:* The suggestions which I have to place before the Committee on this subject have been embodied in a memorandum, which, by your courtesy, My Lord Chancellor, has been circulated to the members. I have also had the advantage of discussing the proposals with some of them. On this occasion, I have only a few remarks to offer by way of supplementing the memorandum. In the draft Report before us, it is proposed that the Federal Legislature should consist of two Houses, namely, a Lower House composed of 300 members, of whom 200 would be elected under a system of direct or indirect election, while the rest would be chosen by the States; secondly, an Upper Chamber of 200 members elected by the Provincial Legislatures or appointed by the States. We shall thus have two bodies—both somewhat unwieldy in size, and little differentiated from each other in composition, and therefore in outlook. It may perhaps be pointed out that additional qualifications are proposed for membership of the Upper House; but it is doubtful if these will ensure its becoming, any more than the Lower House, a body of weight, experience and character, as we visualised it, or attracting a different type of personnel. The probability is that it will only become a replica of the Lower House. I am quoting from Marriott:—

“ Experience has shown that disputes between two Legislative Chambers . . . have been most frequent and most bitter in the Upper Houses which are constituted on an elected basis.”

The elaborate provisions contained in certain constitutions for removing deadlocks between the two Chambers are an eloquent commentary on the characteristic defects of this form of legislative organisation. Lack of adequate differentiation between the two bodies would be a serious defect even in a unitary constitution; in a federal scheme, such as that we are trying to devise, it would be fatal. The component elements of the Federation would have no representation as such in the Upper House, which is pre-eminently the federal organ of the constitution and “ the pledge of the security of State rights.”

The draft Report recognises the principle that the Upper Chamber should, in the main, represent the Units as such (paragraph 22), and speaks of its members as being, in a special sense, the representatives of the Federal Units (paragraph 42). But it is obvious that it is only to the members from the Indian States

that such a description could be correctly applied. The members from British India would not be regarded as the representatives of their Provincial Governments, which might have changed, or of their Provincial Legislatures, which might have been dissolved after their election as members of the Upper Chamber.

It is in this view that I have been urging the need for a Second Chamber composed exclusively of delegates selected by and representative of the Governments of the Federation and of the Units; and I would earnestly plead for due consideration to be given to this suggestion before this scheme tentatively outlined in the draft Report is adopted. I am happy to think that the change can be superimposed upon the plan of Federation we have so far formulated without injuring the general framework and also without delaying the building of the structure.

One of the advantages of this proposal which has impressed me, and which will no doubt appeal to some other members of the Committee also, is that it will obviate dissimilarity of methods between British India and Indian India in regard to the selection of members for at least one of the Houses of the Federal Legislature. It is of the utmost importance that the Federal machinery should function effectively. It would be a disaster if, at some early stage, the system broke down and delayed the up-building of a really united India. I feel that there should be no hesitation in agreeing to such a revision if, as I venture to think, there is sufficient reason for doing so. I dare say many of us have read a special article, which appeared in "The Times" of October 23rd, entitled "Australia as a Unit." The experience of that country, which is administered under a federal constitution, is of special significance to a Conference engaged in devising a similar system for India. They have come to realise in Australia the vital importance of close co-operation and concerted action on the part of the Governments of the federated units in all matters in which the country as a whole is interested. They have been forced to this in the hard school of experience and especially during recent years of economic difficulties. The story is so pertinent that I beg leave to quote from it:—

"Each of the other States also—New South Wales, Victoria and South Australia—although they were near enough to have similar interests, cherishes individuality. State feeling has not diminished with Federation, but has, on the contrary, established itself as a characteristic of Australian life. An Australian is a Victorian or a New South Welshman first, and an Australian only second. A Royal Commission on the Constitution was appointed by Mr. Bruce, and reported later in 1929. They declared that the advantage of having strong self-governing States which could appeal to the local patriotism, knowledge and public spirit, easily outweighed the admitted inconveniences. The events of the intervening years have shaken this argument.

It would be surprising, however, if it were still not strong enough to defeat Mr. Scullin's scheme"—

*i.e.*, of transferring the power of amending the Commonwealth Constitution from the people to the Federal Parliament—

"But the chief hope for the survival of federalism is that, in a way characteristic of British political institutions, a *modus vivendi* involving no changes whatever is in sight.

The Royal Commission recommended several means for co-ordinating States and Commonwealth action, but it referred to the Premiers' Conference, which was largely the creation of Mr. Bruce, merely as a useful body for this purpose. It could not foresee the great and decisive part which the Conference as an institution was to play in the crisis of the next two years. So valuable an addition to the governmental machinery is not likely now to be discarded. The difficulty of obtaining joint action is the burden of the case against federalism. It would seem to many a mistake to apply too drastic constitutional amendments before at least another means, which offers the main advantages of unification without the objections, has been thoroughly tried."

It will be seen that the problem in Australia was how to arrest the tendency to extreme provincialism so manifest in that country, while, on the other hand, ensuring the survival of federalism, which is recognised as the only possible form of government in a Commonwealth which has such strongly marked diversities of interest and differences of outlook between its constituent units. I need scarcely say how much more necessary it is in India, with her far greater diversities, that the Provinces should be kept together.

It will be seen from the extract that the Australian Commonwealth, in the endeavour to overcome the difficulties arising from inadequate means of ensuring joint consultation and action such as that for which I plead, has had to devise measures which, though in no sense illegal, are outside the constitution. Let us not put aside the lessons of experience by agreeing to a constitution having the serious defects to which I have called attention—a constitution which, I venture to think, would be neither sound in theory nor effective in practice.

*Chairman*: Now No. 13, please—the second of these plans. Your Highness of Dholpur, this paragraph refers to your suggestion.

No. 14, please.

*Sir Manubhai Mehta*: May I be permitted to put forward the views of His Highness The Maharaja of Bikaner, who is unfortunately absent to-day. It should be put on record that he had pressed for a larger representation of the States in the Upper Chamber. While pressing for representation of the States on terms of absolute equality, and a fifty per cent. participation in the



Senate, His Highness ultimately thought that even a forty per cent. representation would be acceptable if the total membership was extended to 300 in the Senate and 450 in the Lower Chamber.

*H.H. The Nawab of Bhopal:* I do not sit here to express the views of myself alone, and therefore I must place before this Committee what my mandate is. The mandate which the Chamber of Princes gave at its meeting last March specifically required its representative to claim 50/50 representation in the Upper House, for reasons already explained, and to try to secure individual representation at least for those States which were members of the Chamber in their own right. The numerical strength of the Upper Chamber which has been proposed seems to be too small to meet that demand. I have no doubt that the proposals, as contained in the Report, would be considered very carefully and also sympathetically by the Chamber; but certain States may find it very difficult to accept suggestions which would involve the grouping, for purposes of representation in the Upper House, of States now individually represented in the Chamber.

*Mr. Joshi:* I do not think that the numbers proposed in the Report for the membership of the Chambers are adequate. But, as a matter of compromise, I should be quite willing to approve of the proposal of His Highness The Maharaja of Bikaner of the numbers 300 and 450. As regards the proposals to reserve representation for the States, I do not approve of the percentage of 40 seats being reserved for the States; but, as a matter of compromise, I should be quite prepared to reserve  $33\frac{1}{3}$  per cent. in the Upper Chamber. In the Lower Chamber, I am not prepared to give any reserved representation to the States. The representation in the Lower Chamber should, I think, be distributed according to the populations.

*Mr. Jinnah:* It might be noted that we do not agree to the principle at all, either in the Upper or in the Lower Chamber. We still remain unsatisfied that there is any reason for adopting it.

*Chairman:* Is not that extraordinary? Some say that it is too small and others that it is too large!

*Mr. Gavin Jones:* This question has been argued out, and we say that there should be 150 for the Upper Chamber and 250 for the Lower.

*Mr. Sastri:* I should like your leave to mention the figures put before the Committee by His Highness The Maharaja of Bikaner. In my judgment, it would be very difficult to keep the figure for the Lower House at 300, and, as I accepted in my original remarks, His Highness's argument that it would be very difficult to refuse representation to the Princes who had been included in the Chamber, the figure 200 for the Upper Chamber seems also to be inadequate. I should like to repeat that, while I approved of the line of reasoning which leads certain members of the Committee to prefer small to large Houses, the conditions of India and her

infinite variety preclude our paying too much attention to that point; and it seems to me we should be wise to recognise from the outset that large Houses, while they may not also conduce to despatch of business or of efficiency, will certainly secure that, upon all occasions, the wishes of every section of the community have been fully represented, and that public business, when it is transacted and accomplished, shall be really the reflex of opinion in all its phases and in all its branches. I therefore recommend large Houses rather than small.

*Dr. Ambedkar:* Lord Chancellor, I should like it to be noted that I agree with my friend, Mr. Joshi, in the figures he has suggested for the strength of the two Houses; and with regard to the question of weightage, I agree with my friend, Mr. Jinnah, that the population basis of representation ought to be taken as the basis in both the Houses.

*Pandit M. M. Malaviya:* I agree with Mr. Sastri, for the reasons given by him, that the numbers should be 300 and 450. As regards weightage, I think there should be no weightage given in the Lower House. I agree to weightage in the Upper House for the States.

*Mr. Jayakar:* Lord Chancellor, I agree with the remarks which have been offered to the Committee on behalf of The Maharaja of Bikaner, as elaborated by Mr. Sastri.

*Sir Akbar Hydari:* My Lord Chancellor, I was going to remain silent, because I thought, on the whole, the Report was so very fairly drawn up; but when everybody is having his numbers recorded, I should like to have my number recorded. It may be, in the Upper House, not more than 100, and, in the Lower House, not more than 150. I have accepted the other as a compromise.

*Sir Tej Bahadur Sapru:* I do not propose to make a speech. I will only say that I will agree with the suggestion made by Sir Manubhai Mehta on behalf of His Highness The Maharaja of Bikaner, which has been more or less adopted by Mr. Sastri. As regards the question of weightage, I have always been of the opinion that the Indian States are entitled, on every consideration of fairness, to weightage. I am glad that Pandit Malaviya has agreed to a 40 per cent. weightage for the Indian States for the Upper Chamber. I go one step further. Although, in my original speech, I saw no reason in support of weightage in the Lower House, the question now is, to my mind, not whether one view is right or the other view is right—the question is whether we can come to a settlement by agreement. I would therefore suggest that, so far as the Upper House is concerned, we should offer them 40 per cent., and so far as the Lower House is concerned, we should offer them  $33\frac{1}{3}$  per cent. As regards the numbers of the two Houses, I am more or less in agreement with what Sir Manubhai Mehta and Mr. Sastri have said.

*Sir Samuel Hoare:* Lord Chancellor, I am afraid as long as this Committee sits we shall never all of us agree about the num-

bers. I have given my view about numbers time after time. I am for small numbers; I have never made any secret about it. At the same time, I realise there are many members of the Committee who prefer larger numbers. My view had been based upon two considerations: first of all, that what we are doing is creating, not a House of Commons, but a Federal Chamber empowered to do a limited number of specific duties. I always thought that for that, both on the grounds of expense and efficiency, a small Chamber is better qualified. At the same time I do realise the fact that somehow or other we have got to get this Federation into being, and therefore one cannot impose terms upon other people that they will not accept. I would therefore suggest to my colleagues of the Committee to-day that we should leave this paragraph as it is. I think it not incorrectly sets out the views of the Committee; and I think that we can go on talking here for days and weeks, and months, and we shall never all of us agree about any particular number. I would suggest, therefore, leaving the Committee's Report as it is, leaving this question to be settled by subsequent negotiation between the various interests concerned.

*Chairman:* Had not we better leave it like that? It is as near as may be. I expect, if every one of us put down the numbers now and we were to take the average, it would be more or less right. What I have done is this. I have put it down as near as may be. There will be these little adjustments necessary. Let us leave a little over for somebody.

Now we come to paragraph 15.

*Mr. Sastri:* I am not in favour of the inclusion of the last sentence:—

“In the event of the original adherents not forming a substantial proportion, that is to say, at least one-half, of ‘Indian India,’ it will probably be desirable to devise some method of weightage,” etc.

I am not in favour of any weightage being given, however small the number which first comes into the Federation.

*Sir Samuel Hoare:* If no words of this kind are put in, and if the door is not left open in this kind of way, there are two reasons for objecting, I think. It seems to me that, first of all, the Princes might say “We are putting ourselves into a very weak position. With regard to the small number of Princes who are ready to come in at once, our voting will be of so little account that we shall not be able to make our influence felt.” It will be therefore a deterrent against those Princes, who are ready to come in at once, coming in quickly. I want to avoid that contingency. On the other hand, there is the other aspect of the case, namely, that many of us—I think all of us—in this Committee do regard a substantial representation of the Princes as an essential factor in the Federation. If the voting power of that factor is really insignificant we do not then have that essential

part of the Federation in being. In view of that, and without dictating in any way how this procedure should be arranged, I should have thought it was wise to have some such paragraph as this in our Report. It does not tie the members of the Committee down to any definite figure. At the same time it does leave a door open through which it may be easier for the first of the Princes in the Indian States to come into the Federation.

*Mr. Jinnah:* Who will decide it?

*Sir Samuel Hoare:* I quite agree that that is a difficult question for me to answer straight away, because there are going to be a number of these questions which will have to be left open after the Conference.

*Mr. Jinnah:* The danger is this, if you leave these words in. You leave it as a discretion of the deciding authority, and we do not know what may be decided.

*Sir Samuel Hoare:* But I think we must leave a great many things to the deciding authority. I do not think we can help that.

*Mr. Jinnah:* But this is too serious.

*Mr. Sastri:* I should think that our deliberations so far have disclosed to everyone here, and I expect to everyone in India who has followed our proceedings, the importance and the necessity of Federation. I do not think the Princes will hesitate very much to come into the Federation, especially after the very fine example that has been set by some of the very enlightened representatives of that Order that we have had here. I do not think it necessary—and I am very decisively of that opinion—to offer any reward, which may be considered illegitimate from certain points of view, to those “good boys” who come in in the first stage. There is also a certain risk which, from the point of view of the Princes themselves, I desire from the first to obviate. I should like to be frank in this matter. We are all aware that the inclusion of the Princes in the Federation, and the great importance and even weightage that we allow to that Order, are for the purpose of introducing a certain element of stability into the Legislature. I should not like that idea, in the interests of the Princes themselves, to be made too obvious by being given expression to at every turn. The idea that if we had, for example, five Princes from different ends of India, two from Madras, one from Upper India and one from Kathiawar—supposing that we had these stray Princes coming in at first—that between them there is some common bond which could be secured by their being given some weightage, is too palpably absurd. I have pointed out already that if any State, for instance, should not find admission in the first stages, the likelihood is that its interests will be best represented by its vote being lodged in the possession of the neighbouring British Indian Province. There is no point that I can see at all in saying that Mysore absent should be represented by Kashmir present. I cannot see the reason for it at all, unless it is for the purpose of giving to the Princes who come in a certain vote which they would consider

decent as a counterpoise to British India. That way of looking at the matter I deprecate altogether. When the Federation is formed, an Indian State is to all intents and purposes like a British Indian Province. That the Indian States should regard themselves still, for voting purposes, as a separate entity, to be strengthened where they are weak by illegitimate means, seems to me an idea which this Report ought not in the least degree to encourage; and I am therefore strongly of the opinion that that sentiment should be expunged.

*Sir Samuel Hoare*: I do not know whether I could make a suggestion that might meet Mr. Sastri's point. I do not agree with his arguments—I will say that—but I will not go into them now. I do not regard this question from the aspect that he has just described; but it is clear that there are the two views in the Committee. The view that I have just expressed was expressed some weeks ago, when the Princes were dealing with this question; and I remember His Highness of Bikaner saying a word or two about it. Would it not be a good thing simply to state the fact, and instead of saying that it will probably be desirable, to amend the sentence in this way?—Begin the sentence—"It has been urged by some members of the Committee"; simply stating a fact. "It has been urged by some members of the Committee that, in the event of the original adherents not forming a substantial proportion"—that is to say, at least one-half—"of Indian India, some method should be devised by which their voting strength would be temporarily augmented pending the accession of other States." That does not tie the Committee down to any recommendation: it merely states the fact that some members of the Committee have urged that procedure.

*Pandit M. M. Malaviya*: I very confidently hope that more than 51 per cent. of the population of Indian India will be represented at the first time that the Federation will come into existence, and that the need for the adoption of any such method will not arise.

*Sir Samuel Hoare*: Yes; I think that meets my view. Like Pandit Malaviya, I also hope that the contingency will not arise.

*Chairman*: We hope that the number of Princes who will at once join the Federation will prevent such a contingency from arising.

*Sir Muhammad Shafi*: We hope for all sorts of things, but if these things do not happen, what then?

*Chairman*: You do not mind us recording a hope?

*Mr. Jinnah*: We do object to the acceptance of this proposal.

*Chairman*: It is not accepted at all. All that has happened is that some members are saying that they think that a method will have to be devised; and they all join in the hope that the contingency will not arise. Some share in the hope; others do not.

*Mr. Jinnah*: That is not quite fair. You should read your Report, My Lord. It does commit this Committee to the principle that, in the event where the hope is frustrated, some deciding authority may give them . . . . .

*Chairman*: No; you are introducing the words "some deciding authority". All that it is saying is that somebody is expressing the hope that it will be done. If you like, we will express your hope otherwise.

*Mr. Jinnah*: I can tell you very frankly that I am opposed to any principle of the kind in any event.

*Chairman*: Very well; I think that will do.

*Mr. Jayakar*: Do I understand—I want to have my mind made clear—that, in the alternative formula which Sir Samuel suggested, the word "weightage" disappears?

*Sir Samuel Hoare*: "Some means should be devised by which their voting strength would be temporarily augmented pending the accession of other States." I am willing to draw a distinction between my formula and that of Mr. Jinnah. Put in the word "however"; that shows that nobody is being pledged to anything which he does not support.

*Mr. Jinnah*: In the event of the hope being frustrated, the voting strength is to be "augmented".

*Chairman*: Let us be perfectly clear. What we are saying is this. Some members of the Committee think that in certain eventualities there should be an augmentation—I will use your word "weightage" for a moment. But only some members think that. On the other hand, everybody hopes that no such eventuality will arise.

*Mr. Jinnah*: I have no objection to your stating that certain members have so stated.

*Chairman*: Very well: we will put it in that way: "Some members have stated".

*Pandit M. M. Malaviya*: "Have expressed the opinion."

*Chairman*: "Have expressed the opinion." The only difference between you, Mr. Jinnah, and Sir Samuel Hoare is this. He has said "It has been urged by some"; **you want** to say "Some members have stated their opinion". It is the difference between "stating" and "urging"; but I am sure you will accept the word "stated", Sir Samuel?

*Sir Samuel Hoare*: Entirely.

*Mr. Jinnah*: I was not raising the objection in regard to the word "stated" or the word "urged". I do not mind any word.

*Chairman*: "Some members have stated it as their opinion that, in the event of the original adherents not forming a substantial proportion, that is to say, at least one-half, of 'Indian India', some method should be devised by which their voting strength will be temporarily augmented pending the accession of other States."

*Mr. Jinnah*: "Should be."

*Chairman*: "Should be"—that is right. "But we all hope that such an eventuality will not arise."

*Mr. Jinnah*: "And some members do not agree to any weightage."

*Sir Akbar Hydari*: I want to be quite clear about this. If more than half join, then the portion representing the States will be actually what the States are entitled to, and nothing more than that.

*Dr. Shafa'at Ahmad Khan*: Yes, that is clearly what it means.

*Sir Samuel Hoare*: I think it is better not to go into that detail but to leave it more general. I think I would leave it at least one-half. I think it is better to leave that to subsequent negotiations.

*Sir Akbar Hydari*: Yes.

*Chairman*: Number 16, please?

Number 17?

*Sir Provash Chunder Mitter*: On No. 17 I want to be clear on one point in the last sentence. Apparently members of the Provincial Legislature will be entitled to stand for the Federal Legislature. We have not said anything as to what will happen if such a candidate succeeds. Is it the opinion of the Committee that he should be a member both of the Federal Legislature and of the Provincial Legislature? I thought that was not the intention. The only point to which I desire to draw attention is that that might be stated. I have no objection to a member of the Provincial Legislature standing for the Federal Legislature, but if he succeeds I want to know what your intention is.

*Chairman*: You do not want him to be a member of both?

*Sir Provash Chunder Mitter*: That is what I am suggesting; I am leaving it to the Committee to decide that question.

*Mr. Zafrullah Khan*: That is the present position.

*Chairman*: "But no person should be allowed to be a member of both Legislatures."

*Sir Samuel Hoare*: Is everybody agreed about that? I have an open mind about it. Is it a good thing to impose that condition or not?

*Sir Provash Chunder Mitter*: I think so. It would be rather difficult to discharge the duties adequately in both places.

*Sir Tej Bahadur Sapru*: May I point out that, under the Minto-Morley scheme, a man could be a member of both the Provincial and Central Legislatures? I have known cases of that kind. Under the present constitution, you have to be a member of one or the other—you cannot be a member of both.

*Sir Samuel Hoare*: I am not quite sure whether that is necessary for us to accept.

*Sir Muhammad Shafi*: If I may remind my friend, Sir Tej Bahadur Sapru, in the first two Minto-Morley Reform Councils that was the rule; but the rule was abandoned in the third Minto-Morley Reform Council for reasons of convenience and so on. I was myself a member of both the Punjab Council and the Imperial Council in the second; but in the third I could not be.

*Sir Tej Bahadur Sapru*: We started like that.

*Pandit M. M. Malaviya*: May I say that was brought about after an enquiry by the Government of India? Opinions were asked of those of us who had been members of both Legislatures, and we expressed the view that it was not possible to be a member of both. I was asked and I expressed the opinion that one member could not do the duties in both places.

*Sir Samuel Hoare*: I expect that is so in 99 cases out of 100—that is what actually happens—but is it wise here and now definitely to state that it should never happen? Is it not possible that you might have a Provincial Minister of exceptional value who might, with great advantage, both to the Province and to the Centre, be also a member of the Central organ as well?

*Pandit M. M. Malaviya*: We found that meetings were held and dates fixed in such a way that we could not do our duty in both places; it was unsatisfactory.

*Sir Samuel Hoare*: I should have thought that would depend very much upon the procedure of the Chambers.

*Pandit M. M. Malaviya*: We are dominated by the climate. The whole of the work of the Legislature has to be finished within a certain time. It must be finished in March or the beginning of April; and we found it not practicable to serve on both.

*Sir Samuel Hoare*: I do not want to press my point. I have expressed my view about it. I should be guided by the general body of experienced opinion about it here.

*Mr. Iyengar*: It was found to be impracticable.

*Chairman*: Then we will put in the words: "Provided that no person shall be a member of both Legislatures."

*Sir Akbar Hydari*: Does that apply also to the Indian States?

*Chairman*: No.

*Mr. Jinnah*: Before you leave paragraph 17 may I say that, so far as we are concerned, we are not at present prepared to commit ourselves to the system of single transferable vote?

*Chairman*: Thank you very much, Mr. Jinnah. Now paragraph 18.

*Mr. Joshi*: I want to say that, in my opinion, the Indian States in the Upper Chamber should be selected by the same method by which the representatives of the British Indian Provinces are selected; that is, wherever there are Legislatures in the States, the representatives of the States shall be elected by these Legislatures. Where these Legislatures do not exist, then they shall be nominated until such Legislatures are established.



*Chairman* : No doubt the States will take note of your opinion, Mr. Joshi. Now we go on to paragraph 19.

*Sir Manubhai Mehta* : May I refer to the words appearing in line 6 of paragraph 19—"existing local self-government bodies"? To me it appears that this is rather too sweeping. It would exclude not only the municipalities and the district local boards, but even village communities and village local boards.

*Chairman* : What words do you suggest then?

*Sir Manubhai Mehta* : If the idea is merely to exclude municipalities, it would be better to say so.

*Sardar Ujjal Singh* : And district boards as well.

*Sir Samuel Hoare* : At the same time, we do want to leave the door open for an unbiassed enquiry into the unheard-of methods of village voting that did emerge in our earlier discussions; and I am not sure really that this wording does not go a bit too far. I think it would be better to state it more explicitly.

*Chairman* : What are the words you want, gentlemen?

*Mr. Iyengar* : "The existing statutory local municipal bodies." We are now trying to say that existing statutory authorities which are constituted for one purpose should not be given the right to select representatives for the Legislature. If, in our further investigations, we are able to arrive at some method of indirect election which will give the village a unit of representation in a different manner, we can constitute them for those purposes. What we want now to say is that existing statutory bodies, discharging statutory local functions, should not be availed of for the purpose of securing representation in the Legislatures. If you put that in I think we shall be perfectly safe.

*Chairman* : What are the words, Mr. Iyengar?

*Mr. Iyengar* : "of any existing statutory local self-governing bodies."

*Sir Provash Chunder Mitter* : I wish to say on that point that in the law there are existing statutory gradings of votes which will be very suitable. Therefore, my suggestion is to mention some existing statutory bodies—district boards, local boards—something like that. What I am aiming at is that, because an Indian Village Board is a statutory body, that should be enough.

*Mr. Iyengar* : I am not saying that the vote of any village organisation should be ruled out. What I am referring to now is the statutory character of these bodies. If you really want to constitute a village union for the purpose of election to the Legislature you may constitute it.

*Sir Provash Chunder Mitter* : If you make that clear I have no objection.

*Chairman* : I understand the point. What are the words you want, though?

*Sir Provash Chunder Mitter*: I would like these words, Sir—"Local self-governing bodies, such as municipalities, district boards and local boards."

*Sir Samuel Hoare*: Would it not be better to explain it in a footnote—to leave the word as it is and then have a footnote to say, "This expression does not mean the exclusion of"—whatever the term may be—village boards or village panchayats? Would not that be the best way to do it?

*Sir Provash Chunder Mitter*: Yes, Sir.

*Chairman*: "This expression does not mean the exclusion of village panchayats."

*Mr. Iyengar*: That will cover it.

*Chairman*: Now No. 20, please.

*Mr. Jinnah*: On paragraph 20 I do not quite follow this. You say:—

"The Committee therefore recommend that this body should be charged also with the duty of making proposals for the constituencies to return the British Indian members of the Lower Chamber of the Federal Legislature, and that it should explore fully the alternatives of direct and indirect election indicated in the preceding paragraph."

Well, as far as we are concerned we are opposed to any system of indirect election.

*Chairman*: Thank you very much. I understand that.

*Mr. Jinnah*: In relation to the Lower House, of course.

*Chairman*: Yes, quite so.

*Sardar Ujjal Singh*: In the same paragraph, it is, I believe, not quite correct to say:—

"some method of indirect election, as recommended by the Franchise sub-Committee of the Conference."

The Franchise sub-Committee did not go into the question of direct or indirect election at all. So far as the suggestion in the Franchise sub-Committee's Report is concerned, it only contemplated direct election and an enfranchised population to the extent of twenty-five per cent., and suggested that some methods ought to be explored by which those who will not be enfranchised might find some sort of representation by the Mukhi system or the system suggested by Lord Zetland.

*Sir Muhammad Shafi*: I do not think the Committee made the suggestion; I think it was Lord Zetland, not the Committee, who made it.

*Sir Provash Chunder Mitter*: The Committee also made the suggestion.

*Sardar Ujjal Singh*: This is paragraph 4, page 57 of the Report:—

“ We recommend that, in addition to providing for this increase, the Commission should consider the introduction of a scheme by which all adults not entitled to a direct vote would be grouped together in primary groups of about 20 or in some other suitable manner, for the election of one representative member from each group, who would be entitled to vote in the Provincial elections either in the same constituencies as the directly qualified voters or in separate constituencies to be formed for them.”

So this would not be a correct reproduction.

*Mr. Jinnah*: May I remind the Committee that this came up before us once, and we all came to the conclusion, after examining the record, that so far as the question of the electorates and the franchise for the Federal Legislature was concerned, the Franchise Committee had left it out of their consideration? They did not go into it.

*Sardar Ujjal Singh*: That is paragraph 14. It says:—

“ The form of the Central or Federal Legislature has not yet been decided, and in these circumstances we do not find it possible to make any suggestions regarding a suitable franchise system.”

*Chairman*: What alteration is suggested?

*Mr. Jinnah*: That it should be dropped.

*Chairman*: We will leave this out.

*Mr. Sastri*: I wish to endorse Mr. Jinnah's suggestion that this should not be considered in any shape or form.

*Mr. Jayakar*: May I ask whether these words are intended to include the scheme suggested by Mahatma Gandhi for the indirect election?

*Sir Samuel Hoare*: I should have thought that they covered all the possible schemes.

*Mr. Jayakar*: I want to support the scheme put forward by Mahatma Gandhi.

*Chairman*: It was meant to cover that.

No. 21.

*Mr. Sastri*: I feel a certain difficulty in regard to the Bombay Presidency, which by some chance has been selected as an example. That is a consideration which is likely to be forgotten. Bombay may be divided into Bombay proper and Sind. In that case the argument would lose a great deal of its importance—you cannot afterwards place Bombay in the same category as other Presidencies, when it has been shorn of Sind.

*Mr. Jinnah*: I think it would be better off!

*Sir Provash Chunder Mitter* : There is no doubt that the Bombay Presidency occupies a very big position, because of the ports of Bombay and Karachi. If we proceed on a population basis and then give a weightage for important ports, we shall get a right principle.

*Chairman* : I follow.

22, please.

*Sir Akbar Hydari* : My Lord Chancellor, I want to suggest a little verbal alteration. I would prefer to put down the number in the Central Provinces at 5 and leave out Berar.

*Sir Maneckjee Dadabhoy* : I protest against that.

*Sir Akbar Hydari* : Berar has always sent its representatives separately.

*Sir Maneckjee Dadabhoy* : Sir Akbar Hydari is not aware of the importance of the Central Provinces.

*Sir Akbar Hydari* : I am quite aware.

*Sir Maneckjee Dadabhoy* : And the part that the Central Provinces has played in the Legislative Assembly.

*Sir Sultan Ahmad* : And also here.

*Chairman* : You want to leave it out?

*Sir Akbar Hydari* : Yes. I mean, it must be definitely understood that the quota for the Central Provinces does not include Berar, whatever may be the number.

*Sir Provash Chunder Mitter* : With regard to the proposal in paragraph 22—" But the suggestion has been made that a possible solution might, for example, be to assign to each of the Provinces which exceed 20 millions in population, namely, Bengal, Madras, Bombay ", etc., 17 seats—in paragraph 21 we have already deviated from the population principle, and I would suggest that the Provinces with a population of more than 30 millions should have a higher representation.

*Chairman* : I think we must leave it as it stands. We note your objection.

*Mr. Jinnah* : With regard to the North-West Frontier Province, I know this number will not satisfy the people of the North-West Frontier Province.

*Mr. Zafrullah Khan* : The Report of the Simon Commission also recognises that, owing to its peculiar position on the Frontier, and so on, it should have a larger number.

*Chairman* : I know that.

Now 23, please.

*Mr. Gavin Jones* : Sir, I would like to point out that Bengal and the United Provinces have not been very well treated in this distribution of seats in the Lower House—Bengal especially. Why Bombay should have weightage against Bengal I cannot quite see, because Bengal really is a far more important centre of commerce

and industry than Bombay. I am a United Provinces man, so that I can say so. Also Bengal has double the population of Bombay. I certainly think this needs reconsideration.

*Chairman*: It is only given as an example.

*Sir Provash Chunder Mitter*: I would like to add this, that not only have Bengal and the United Provinces double the population, but they also have trading interests which are very important. Further, Bengal has the important Port of Calcutta.

*Pandit M. M. Malaviya*: May I suggest the addition, at the end of paragraph 22, of the words—"This matter will require further consideration"?

*Chairman*: Very well; we will put at the end—"this requires further consideration."

*Mr. Zafrullah Khan*: Here too we want to draw attention to the position of the North-West Frontier Province on the same considerations.

*Sir Akbar Hydari*: With regard to the number of the Central Provinces, there again, it must be taken as excluding Berar.

*Chairman*: Yes, excluding Berar.

*Mr. Jayakar*: I do not wish to commit myself to the view that any weightage that may be given to Bombay should be through the special representation which Indian and European commerce has. I should like to leave that question open, as to how that weightage should be distributed.

*Pandit M. M. Malaviya*: A similar remark about further consideration should be added at the end of 23,

*Sir Provash Chunder Mitter*: Wherever we deal with Bombay, the question of the separation of Sind should be borne in mind.

*Chairman*: Now No. 24:—"Apportionment between the States of their quota." This is rather a matter for the States, and it is rather a pious expression of opinion. We are only suggesting it in a friendly sort of way to you. No doubt you will receive it in the same sort of way—so that we need not trouble about that.

*H. H. The Nawab of Bhopal*: The time limit which is suggested may be found to be too short to enable the Princes to arrive at an understanding amongst themselves. The Government of India are already making certain enquiries in this connection, and their Report is awaited. Besides that, the Chamber of Princes meets in session, and if the Committee is then set up, it may perhaps be difficult, taking into consideration the complexity of the question, to secure an understanding between the interests and groups concerned. We realise the necessity of an early decision in the matter, and I should like to assure the Committee that every possible effort will be made to arrive at a very early decision. It may, however, be found, when we are working it out, that we may be delayed a few days or a few months. That was the only point with regard to which I desired to safeguard myself, but I have no objection.

*Sir Samuel Hoare*: We might say "which should not, they hope, extend beyond . . ."

*Pandit M. M. Malaviya*: Your Highness has no objection to this being left as it stands. If you cannot complete your work in time, everybody will understand.

*Sir Mirza Ismail*: The addition here made is that the Princes should be invited to arrive at a settlement in the first instance. I presume it is not the Chamber alone that is meant, as several of the bigger States are taking no part in the deliberations of the Chamber, and have to be consulted individually. I take it also that the Viceroy would merely invite the views of the States and of the Chamber, but would not purport to settle the matter. Here I see it is said that the Viceroy should be asked to settle the matter.

*Chairman*: What words do you suggest there, Sir Mirza?

*Sir Mirza Ismail*: I should omit altogether the reference to the Viceroy—he should not be asked to settle the question, because in that case he, or His Majesty's Government, through their representative, would be prejudging the case.

*Chairman*: I accept that. Leave out the words from "the Viceroy".

*H.H. The Nawab of Bhopal*: May I go back to paragraph 24 for a moment? I hope I am correct in believing that the decisions given by any Committee which will be appointed by His Majesty's Government, in the absence of an understanding between the States themselves, will not be final and binding on the States coming within the Federation.

*Sir Samuel Hoare*: They could not be binding. The last word upon the Federation must come from you.

*H.H. The Nawab of Bhopal*: That is what I want to be made quite clear.

*Sir Mirza Ismail*: But it says the decision is final.

*Sir Samuel Hoare*: It may be final from the point of view of the Report. At the same time, you cannot force a State to come in if it refuses to come in.

(*The Committee adjourned at 1-15 p.m. and resumed at 2-30 p.m.*)

*Chairman*: Your Highnesses and Gentlemen, we have got to paragraph 27 on page 15. Does anybody want to say anything on paragraph 27?

*Mr. Joshi*: Lord Chancellor, I do not approve of the first sentence:—

"While the Committee remain of opinion that this question must be left to the decision of the States, it cannot be contended that it is one of no concern to the Federation as a whole."

I do not agree with the first part of the sentence. I am not of opinion that this question must be left to the decision of the States.

I feel that it is a question which must be decided by the mutual consent of the States Delegation and the British Indian Delegation, as it is a question of vital importance to the Federation as a whole. I feel that the representatives of the States in the Lower Chamber should be selected in the same way as the representatives of British India. I note the assurance given by Their Highnesses The Maharaja of Bikaner and the Nawab of Bhopal, but I feel that this assurance does not take us very far. In the first place, any assurance as to the voice given to the Legislature is not of great use, as the assurance given is only on behalf of these two States. His Highness The Maharaja of Bikaner stated that he could not give an assurance on behalf of all States; but, Lord Chancellor, if the States Delegation could speak on behalf of all the States and demand representation and weightage on behalf of all the States, it is not reasonable to state that, in the matter in which the States are to concede certain rights to their subjects, they cannot speak on behalf of all the States. If they could speak on behalf of all the States in demanding representation for themselves, then certainly they could speak on behalf of all the States in this matter also.

Secondly, Lord Chancellor, I feel that the voice which has been promised by Their Highnesses The Maharaja of Bikaner and the Nawab of Bhopal is not of much use, for this reason, that so far as my information goes, the Legislatures of Bikaner and Bhopal have a nominated majority in both places. If you give voice to Legislatures which have a nominated majority, you really give voice to the Ruler himself.

*Sir Manubhai Mehta:* The position is not correct as regards Bikaner.

*Mr. Joshi:* All right, Sir. I shall be quite willing to hear what the total strength of the Bikaner Legislative Assembly is, and also to have information about the Legislature of Bhopal.

*Sir Manubhai Mehta:* I will give you that information.

*Mr. Joshi:* But I feel that, as the Legislatures are constituted to-day, it will not be the voice of the elected members. If an assurance is given that the voice will only be given to the elected members, it will have some value, although it may not satisfy me wholly. I cannot subscribe to this paragraph.

*Chairman:* Thank you, Mr. Joshi; I quite follow. No doubt the States representatives will pay attention to what you say.

No. 28, please.

*Dr. Ambedkar:* I should like to draw your attention to the last four lines of the paragraph. After stating, in the beginning, the recommendations of the sub-Committee in paragraph 34 of their Second Report, Your Lordship stated—

“ We make no recommendation here relating to the first four of these interests, since the decision on this point is one for the Minorities sub-Committee.”

I do not think that Your Lordship means that the Committee is indifferent to the representation of those interests, nor, I think, does the opinion expressed in paragraph 34 of the Second Report mean this. What you mean is that you cannot make any recommendation as to the extent or method of representation. I should therefore be obliged if you would amend the passage by adding, after the word " recommendation ", the words—

" as regards the extent or method of their representation."

*Mrs. Subbarayan*: You may remember that I spoke at one of our sittings on the possibility of securing some special provision for the representation of women in the Legislature, and suggested that the consideration of this matter should be deferred until the Minorities Committee published their Report. But, lest the point be overlooked, I should respectfully suggest that some reference to it be made here, and that the following words be added in line 9 of paragraph 28; after the word " interests ", insert the words

" or to the representation of women in the Legislature."

*Chairman*: I am much obliged—I am sorry that we left it out—and I am also much obliged to Dr. Ambedkar. We will put in both those amendments. That was an oversight.

*Mrs. Subbarayan*: On a previous occasion, while recognising the valuable work done by many of the nominated members in the past on the Legislatures, I objected to nomination in the new constitution on principle. I feel that I object to it all the more when I find that the two Chambers may have co-equal powers. I quite agree with the Report that the services of persons of the elder statesman type are most valuable; but I am also convinced that the system of nomination is unwise and undemocratic, and, therefore, that it will be better if the services of such persons too are secured through some system of election. If there is a system of nomination, I cannot help thinking that the whole object of this clause may be frustrated, and that the Ministry may only think of strengthening its own party in the Upper Chamber. Apart from this general objection, I would ask that, in paragraph 32, lines 7, 10, 19 and 22, the word " persons " be substituted for the word " men ".

*Chairman*: I quite agree, Mrs. Subbarayan. In England we actually held, until about five years ago, that a woman was not a " person ".

*Mrs. Subbarayan*: Perhaps they meant that she was something better!

*Mr. Zafrullah Khan*: In our General Clauses Act, it says that, whenever " man " is used, it includes " woman ".

*Mr. Iyengar*: I desire to associate myself with what my friend, Mrs. Subbarayan, has said as regards nominated members. I also agree that it is very useful to have these elder statesmen in the Upper Chamber; but surely, if these elder statesmen are really wanted by the country, it would certainly be possible for them to



come in by some constituency or other. I think the principle of nomination is vicious and we should get rid of it altogether.

*Dr. Ambedkar*: I should like to associate myself with what has fallen from Mrs. Subbarayan.

*Mr. Iyengar*: I suggest that the whole of paragraph 32 should be omitted.

*Sir Samuel Hoare*: Lord Chancellor, I hope you will not do that. I thought that a limited number of these nominated members would add an element of strength to the Chambers. There are, rightly or wrongly, a certain number of people whom you will not get into either Chamber by election, and it is that kind of people that I contemplate. I do not contemplate a great block of nominated members, but I do contemplate this small section of elder statesmen or elder stateswomen.

*Chairman*: I quote follow the objection. We will make a note of that. I do not think the objection is to the elder statesmen and elder stateswomen, so to speak, helping on people; but the difficulty is with regard to nomination.

*Sir Tej Bahadur Sapru*: May I be permitted to point out that the provisions of 31 and 32 seem to me to be a considerable advance over the last Report? In the last Report, what was contemplated was official representatives of the Crown subjects. That Your Lordship has done away with in the present Report. Approaching the matter from that point of view, it seems to me to be a considerable advance. Now, in paragraph 32, you do not suggest the nomination even of officials; but what you suggest is that there may be three or four men who, for reasons mentioned by you in that paragraph, may not find it possible to go into the Legislature, and so the Legislature may not be able to obtain the benefit of their experience which may be of a very valuable character. It is not that I am fond of nomination—I should really like to have nomination done away with—but I do not understand that is going to be a permanent feature of the Constitution. I gather you are only providing for a very small, insignificant and almost negligible number of three or four men who might be useful to us in many ways.

*Chairman*: Yes, that is what we thought.

*Sir Tej Bahadur Sapru*: They will not be officials?

*Chairman*: No; we have excluded officials altogether.

*Sir Tej Bahadur Sapru*: Yes; and from that point of view, it seems to me to be a considerable advance. I support paragraph 32. My reasons are that, in the welter of ideas which the new constitution will set free, what has been called "cross-bench" mentality will be more common than in this country, and I want to provide for that "cross-bench" mentality for a few years more.

*Sardar Ujjal Singh*: I want to support this paragraph, but I want to put some limit to the number. last time you put a limit of ten. Some limit ought to be put—five or six or seven. There is no limit put down here.

*Chairman*: Is that in both Chambers?

*Sardar Ujjal Singh*: In the Upper Chamber only.

*Sir Maneckjee Dadabhoy*: I wish to say I am in entire agreement with Sir Tej Saprū. I am looking forward to a day when I shall welcome Mrs. Subbarayan in the Council of State as a nominated member.

*Chairman*: I hope you will be there too.

*Pandit M. M. Malaviya*: May I know—how is a question like this going to be decided, where opinions are divided. Are we to record our different votes?

*Chairman*: No. I think the general opinion is in favour of it; but in the shorthand notes your objection will appear.

Now number 33. "Qualifications and disqualifications for membership."

Now number 34.

*Mr. Zafrullah Khan*: In number 34, I presume the age limit laid down in the last line refers to candidates only and not to voters.

*Chairman*: Yes, I think so.

*Mrs. Subbarayan*: With regard to the proposal that the existing rules regulating the qualification of voters, and consequently of candidates, for the Council of State, should be adopted as a model for candidates for the Second Chamber of the new constitution, this would, in my opinion, react most unfairly on women. There are extremely few women who possess the present qualifications; and, consequently, the number of women who would be eligible for the Second Chamber, if this proposal is enforced, would be infinitesimal. I think it is most important that there should be women members of the Second Chamber; and, therefore, there should be a considerable number of women eligible for it. It is proposed that the prescription of the detailed qualifications shall be left to the Expert Franchise Committee. I would therefore ask that it should be a definite general instruction to that Committee to secure the eligibility of a considerable number of women as candidates for the Second Chamber. I should like this point to be added to this paragraph.

*Chairman*: I think that is right. There, again, my apologies; but we could not remember everything. Have you any form of words, by any chance?

*Mrs. Subbarayan*: I will leave that to you, Lord Chancellor.

*Chairman*: Will you tell me this? Would you say quite bluntly that the qualifications should not apply to women, or would you say there should be some qualifications?

*Mrs. Subbarayan*: It is difficult for me to suggest anything now. I think the Expert Franchise Committee should bear this point in mind and meet it.

*Sir Samuel Hoare*: Would it meet you if we put in the words "taking into account the claims of women"—some general phrase of that kind?

*Mrs. Subbarayan*: Yes, that will do.

*Chairman*: We will say "should be adopted as a model for candidates for the Upper Chamber, taking into account any special provisions that may be required for women".

*Dr. Ambedkar*: I find considerable difficulty in subscribing to this part of paragraph 34—the Council of State qualifications being taken as a model. It seems to me that it will entirely block the representation of the Depressed Classes.

*Chairman*: We must not do that.

*Dr. Ambedkar*: Liberty should also be given to the Franchise Committee to take this into consideration in framing their model rules

*Mr. Joshi*: The qualifications of voters for the Council of State will not enable the working classes to become candidates. Some of these qualifications are not possessed by the working classes. I would suggest that tenure of office in a trade union should be added. I submit that special mention should be made in this Report that these classes, who are not likely to have the qualifications mentioned in the rules of the Council of State, should be provided for by the devising of some qualification which will be possessed by these classes.

*Diwan Bahadur Mudaliyar*: One of the qualifications for membership of the Council of State is membership of the Legislative Councils. We have made it clear that the Legislative Councils will send representatives to the Council of State, and that every member of the Legislative Councils will be both a voter and can be a candidate for the Council of State. In the Provincial Legislative Councils, Labour and the Depressed Classes will all be represented. The members of the Legislative Councils will be eligible for membership of the Council of State. It is only when you go outside the Legislative Councils for a candidate that these difficulties may arise. I do not think, in practice, there will be any difficulty in sending a Depressed Class representative or a Labour representative or a woman to the Council of State.

*Mr. Joshi*: Lord Chancellor, I know the rules for the election of the members of the Council of State and the composition of the voters. If no other class gets the qualification beyond the members of the Legislature, I can understand that; but if there is to be any qualification besides the qualification of membership of the Legislature, then we must decide what qualifications the other voters should possess—whether it is membership of a certain body, say membership of a trade union. We must devise some qualification.

*Chairman*: We will see that that is done. We cannot at the moment say what the particular qualification will be, but we will take care to deal with that point.

*Mr. Joshi*: I am only suggesting office in a trade union.

*Chairman*: Then we come to paragraph 35. I do not think there is very much on that.

Paragraph 36—"Disqualifications."

*Pandit M. M. Malaviya:* Towards the end of this paragraph it says "actually undergoing a sentence of detention". Why should that be a disqualification? If he is undergoing a sentence of detention at the time of the election, he may sit later on.

*Chairman:* This is what we say:—

"At the same time, we consider that the rules should be so framed as to disqualify from candidature any person who, at the time of an election, is actually undergoing a sentence of detention and who would consequently be unable, if returned, to fulfil his duties to the Legislature and to his constituents."

What we meant was that it is no use having a man as a Member of Parliament who cannot attend. That is what was meant. I see your point, though, because you say that at the moment of his election he may be undergoing a sentence of detention, but by the time he wants to work he will be out again.

*Pandit M. M. Malaviya:* Yes.

*Chairman:* I follow what you mean. We will just alter the meaning there so as to meet your point.

*Pandit M. M. Malaviya:* So that that will not be a disqualification. A man being under detention at the time of the election will be under no disqualification. We have found in practice that some such provision is needed. Some people have been elected to the Assembly while they were still under detention.

*Mr. Sastri:* I am going to say a word, with your leave, to support the recommendation in the text of the Report. It appears to me that if a person who is in gaol or otherwise under detention is elected by a constituency, the constituency must be interpreted as expressing a political opinion rather than exercising its franchise. The constituency really disenfranchises itself. We wish to make provision for all constituencies to exercise their franchise and be represented. In this particular case, by electing a person who is under detention, and is therefore unable to exercise his position, the constituency is encouraged to disenfranchise itself, and gets in return only the satisfaction of recording a political opinion against the action of government. I do not see any particular advantage in that, and I therefore support the text as it stands.

*Pandit M. M. Malaviya:* I regret that I cannot agree with Mr. Sastri. It is not a question of the constituency expressing a political opinion on a sentence passed on an individual. Nobody can say what a proper sentence may be. Mr. Sastri does not take account of what a sentence may be. If a person is undergoing imprisonment at the time of election, and if his constituents have confidence in his ability, integrity, character and public service, and prefer to elect him rather than every other candidate available to them, they are expressing their appreciation of the public service and quality of the man, and not passing any political opinion upon

the merits of his sentence. The sentence may be for some purely technical offence; or it may be for something serious; but whatever it is, when the Committee decides that a conviction should not be a disqualification for a candidate, I submit that this disqualification also should be removed, and that the constituents should be left free to elect a person in whom they have confidence, and that advantage should not be taken of a person simply being under imprisonment or detention at the time of the election to keep him out of the Assembly.

*Sir Maneckjee Dadabhoy*: I am in entire agreement with Mr. Sastri, but there is another aspect of the question. Suppose that three candidates are standing, one undergoing sentence and the other two also—very able and capable men—at liberty, who should get a chance of competing on fair terms and getting into the Assembly, Council of State or other Chamber. It would not be fair to the candidates at liberty that a person undergoing a sentence should be a candidate. This is a mere matter of popular sentiment. A person undergoing imprisonment will, out of the pure sentiment of the people and their approval of his action, be able to get a larger number of votes than the others who are qualifying on their own merits.

*Chairman*: You are saying that, if you want to get into Parliament in India, you should get a month's hard labour!

*Sir Sultan Ahmed*: I support the Pandit Malaviya, and say that, if conviction is not a disqualification, mere detention should not be a disqualification for the candidature. On the other hand. I feel that, if you allow a man to be a candidate for Parliament here, though he may be a minor, provided he attains his majority before sitting—as recently happened in a case of which you know in this country—I do not see why a person who is under detention at the time of the election should be disqualified.

*Sir Samuel Hoare*: I am inclined to think that what we really ought to regard, in a question of this kind, is the dignity of the constitution. Certainly, from my own experience, looking back over the last few years since the War, I have seen many cases—I am now speaking of Europe—in which some of the new constitutions have been made really ridiculous by this habit of electing people who, for one reason or another, cannot or will not serve. I should have thought, if you really want a good, up-to-date, working constitution in India, that this was not a step which, upon practical grounds, you would be wise to take. I quite see the point made by Pandit Malaviya, that the man may come out of prison a few days after the election, but I am afraid that many difficulties would arise. We have exactly the same state of affairs here with the disqualification due to bankruptcy. My own advice, looking at the question quite apart from theory, and from the point of view of getting a constitution that will work and getting members into the Assembly who will actually serve, and also not making your constitution ridiculous, is that this proposal be accepted. I think that it is, as Mr. Sastri has just remarked, a wise one.

*Mr. Iyengar*: Lord Chancellor, May I ask whether, if you remove the word "consequently", it will not express Pandit Malaviya's idea—"any person who at the time of the election is actually undergoing ..... and who would"—it is cumulative—"be unable, if returned, to fulfil his duty".

*Pandit M. M. Malaviya*: No; it would not.

*Chairman*: I think it would, would it not, Pandit, for this reason? Supposing the election were within three weeks, anybody who had a month to serve would not be eligible. Is that not what you mean?

*Mr. Iyengar*: That if a man's sentence of imprisonment is such that it will enable him in due time to go and serve his constituency, then he is eligible.

*Chairman*: Let me put the case to you and see if this is right. Supposing, merely for the sake of argument, you are going to have quinquennial elections. Let us see how it works out. Supposing a man was put up for a constituency and he was undergoing a sentence of ten years' penal servitude. It is obvious that, if he were elected, he could not serve for a single day in that next Parliament, because by the hypothesis he would be doing ten years elsewhere. So you want to say that, if it is a case where a man cannot serve by reason of the length of his sentence, then he is not qualified, is that it?

*Pandit M. M. Malaviya*: Yes; but what I suggest is it should be left to the electors not to act so foolishly. They must be trusted to act as reasonable men. They would not elect a man who was under a sentence of ten years' imprisonment. But, as it is put, it means that a person who is serving a sentence which may expire shortly after the election is shut out. With reference to what Sir Samuel Hoare said, I submit the mere fact that a man is serving a sentence of imprisonment should not count with regard to the dignity of the House. A man undergoing a sentence of imprisonment may be the most honoured man in the land; we have had instances of it. If there is a man in whom the electors wish to place their confidence and whom they honour, they may prefer that he should be absent for six months than that he should be entirely absent from the sessions of Parliament as a whole. Therefore, I submit that the mere fact of detention should not count against him. It is unnecessary to provide that, if his sentence is a long one or longer than the life of the Parliament, he should not be elected—that should be left to the judgment of the electors.

*Mr. Zafrullah Khan*: May we not perhaps reconcile the two views by inserting a provision, wherever these rules are laid down, that if, after a candidate has been elected, he fails within a certain time—which may be fixed—to take his Oath and take his seat, it may be at the discretion of the Governor-General to declare that seat vacant.

*Sir Samuel Hoare*: I think possibly a procedure of that kind might effect what I think most of us wish to see.

*Mr. Sastri:* A person of that description could be re-elected every time a vacancy is declared.

*Mr. Zafrullah Khan:* Then he should not be elected in such a case—there should be a provision to that effect.

*Sir Samuel Hoare:* Of course, what one does want to avoid is a number of candidatures simply for the purpose of propaganda. That has happened very often on the Continent of Europe. People are put up who are either not going to take the Oath or are not going to serve, or for one reason or another are not going to carry out the work of their constituencies.

*Pandit M. M. Malaviya:* That is a different matter. It can be provided for in a different way.

*Sir Samuel Hoare:* I do not think it can.

*Pandit M. M. Malaviya:* What you are considering here is whether there is any justification for making the proposal which is before us. Besides that, there is another matter connected with it. In India, a number of persons are kept as *détenus*, either under a Regulation or an Ordinance. A number of persons are detained as *détenus*. Now, how would their case be affected by this? They are not put on trial. Without trial they are detained for years; they have sometimes been detained over two years.

*Chairman:* Under a sentence?

*Pandit M. M. Malaviya:* Without a sentence.

*Chairman:* But this is under a sentence.

*Pandit M. M. Malaviya:* That is what I want to make clear—a sentence of a Court of Law. Otherwise they are sentenced—that is to say, the orders are passed against them—under some Regulation or some Ordinance; and it would be a great hardship if they were debarred from standing as candidates.

*Chairman:* I think, on the whole, it would be better here to do what we have done elsewhere—to put the alternative—Some of us say this, some of us say that. Would that suit you?—because that would preserve your point, you see, without making it definite. Some people rather want to stick to this—Mr. Sastri and Sir Samuel Hoare. On the other hand, your views, which I quite appreciate, are that it ought not to be preserved. Do you not think we had better let it stand, and then put in a caution? On the other hand there were a number of people who are not in agreement with this. Would not that help you?

*Pandit M. M. Malaviya:* I submit, My Lord, this is a matter about which a clear expression should be made of its opinion by the Committee one way or another.

*Sir Samuel Hoare:* But you cannot do that. It is no good voting upon a thing like that. We never vote upon anything; and if we did. I do not think it would carry much weight, because it is not the number of votes here that matter—it is the opinion which may be behind us. I would suggest that the best way we can meet

every kind of opinion will be to say some of us think one thing and some of us think another thing.

*Chairman*: Pandit, supposing we were to put in something like this: "At the same time, some members of the Committee consider"—and then at the end—"On the other hand, a large section—"

*Sir Samuel Hoare*: Is it a large section?—I do not know.

*Chairman*: Well, "A section of the Committee are not in agreement with this".

*Pandit M. M. Malaviya*: "Are opposed to this view."

*Chairman*: "Are opposed to this view"; certainly. "On the other hand, a section of the Committee are opposed to this view."

*Pandit M. M. Malaviya*: Would Your Lordship also add—"being of the opinion that a sentence of detention should not constitute a disqualification".

*Mr. Iyengar*: May I know whether the words "sentence of detention" are intended to convey the view that it is a sentence ordered by a Court of Law after trial?

*Members*: Yes.

*Mr. Iyengar*: If that is so, we have no quarrel.

*Chairman*: I think we have it right now. I see the importance of the point.

Now No. 37. I think that is all right.

No. 38—the Oath of Allegiance.

Now we come to a very important paragraph—the relations between the two Chambers. I will take Nos. 39, 40, 41 and 42 together.

*Sir Muhammad Shafi*: With regard to the recommendation embodied in paragraphs 42 and 43 of the draft Report, I venture to submit that the record of the discussions will show that the overwhelming majority of opinion, certainly among the British Indian Delegation, was to the effect that, while in all other respects the two Houses should occupy an equal position, with regard to the Demands for Grants, they should be cognisable by the Lower House, and that so far as the initiation of Money Bills was concerned, they should first be introduced in the Lower House. The recommendation as embodied in the draft Report is exactly to the contrary. I venture to submit that that ought to be corrected.

*Sir Tej Bahadur Sapru*: I should like to associate myself with the remarks that have fallen from Sir Muhammad Shafi. While I do think that the powers of the two Houses of the Legislature should, following the well recognised principles of constitutions in various Dominions, be of a co-ordinate character. I should like to make one or two very important exceptions to this general rule, namely, first with regard to the Money Bills, which, in my humble opinion, should always be introduced in the popular House or the



Lower House. That is the practice, too, I find, in every one of the Dominion Constitutions.

*Sir Muhammad Shafi*: That was one of the reasons I gave for my suggestion.

*Sir Tej Bahadur Sapru*: Secondly, the question of Supply has got to be very carefully considered and determined. The usual practice is that Supply has got to be voted by the popular House. Well, as a matter of fact, as *Sir Muhammad Shafi* will be able to tell you, in the present existing Legislative Assembly supplies have got to be voted by the Legislative Assembly first, and then ultimately the matter comes up to the Upper House—merely to be placed before the Upper House. You will agree there, *Sir Muhammad*?

*Sir Muhammad Shafi*: Supply Grants are exclusively cognisable in the Lower Chamber under the existing rules. Money Bills are introduced in the Legislative Assembly and then go up to the Council.

*Sir Tej Bahadur Sapru*: What about the vote of Supply? My impression was that they are never voted upon in the Upper House, but that the vote takes place in the Lower House.

*Sir Muhammad Shafi*: In the Lower House, yes.

*Sir Tej Bahadur Sapru*: Now, I would like to have the same sort of practice here, because one great objection that will be taken to these paragraphs in this otherwise excellent Report will be that you in an indirect manner make the Ministry responsible to both Houses, and that is what I want to guard against. Therefore, I would say that it would be more accurate to say that a considerable section of the Delegates from British India—in fact, you might say all the Delegates from British India, unless, of course, *Sir Maneckjee Dadabhoy* strikes a note of dissent . . . .

*Sir Maneckjee Dadabhoy*: As I mentioned in my speech, if you will remember, I supported you, and I support you not only now, but I agreed then. I tell you now that we busy and important people in the Council of State do not want to have this bother. We gave that work to you in the Assembly, to manage those things.

*Sir Tej Bahadur Sapru*: I am very glad to stand corrected by *Sir Maneckjee* in this respect. Therefore, the position is that, so far as British India is concerned, the representatives in this Committee very strongly support the idea of the ordinary constitutional method and practice in regard to Money Bills and Supply being followed in our constitution.

*Sir Muhammad Shafi*: And the point was emphasised, I remember, during the debate, that this has been the practice under the existing constitution in India for the last ten years, and is also the practice in all the Dominion Constitutions within the British Commonwealth of Nations.

*Mr. Gavin Jones*: I am afraid I do not agree. I do not mind whether it is introduced in the Lower House or not; but what I

do mind is that the final decision should be there, and I think that we should, as far as possible, follow the Australian Constitution, which has worked very satisfactorily as far as Money Bills are concerned, and that the final decision should not rest with the Lower House.

*Sir Muhammad Shafi:* Nobody has said that.

*Mr. Gavin Jones:* Well, the introduction is not an important matter. I would prefer that Bills should be introduced in the Upper House as well, and I entirely agree with your remarks in your Report, in which you say that the powers of the two Houses should be equal. At the same time, Sir, I should like to point out that in clause 43 they are not equal, because you suggest that the decision should be come to by a Joint Session of both Houses, but that it should be by a bare majority. Well, considering that there will be 200 members in the Upper House and 300 in the Lower House, it makes the Lower House dominant. I think that these matters want very careful consideration, and that we should aim at making both Houses equal. It is a very sound principle for India to start off with.

*Dr. Ambedkar:* I am still of the opinion, which I expressed when we discussed this matter, that we consent to a Second Chamber only upon the understanding that the Second Chamber shall be a revising Chamber with a suspensory veto. It shall not have an equality of status with the Lower Chamber.

*Pandit M. M. Malaviya:* I agree with Dr. Ambedkar, and suggest that the whole of paragraphs 39 to 43 should be omitted, and that the whole of this portion of the Report should be recast. We are met to form a democratic constitution, but we are not carrying out that purpose, in my humble opinion. I find that the Report goes much further than the discussion in the Committee; for instance, I find it said that there would be no justification for endowing one Chamber with powers denied to the other. As Sir Tej Bahadur Sapru, Sir Muhammad Shafi and others said, Money Bills for the purpose of Supply should be particularly within the competence of the Lower House; and, in spite of that discussion, I find this opinion expressed in paragraph 42:—

“We see no reason why the principle of equality of powers should not extend also to the voting of Supply.”

I submit that the whole of this paragraph should be recast.

*Sir Samuel Hoare:* It would be very interesting to hear the opinions of some of the representatives of the States.

*Sir Akbar Hydari:* I am strongly of the opinion that, as far as the position of the Indian States is concerned, it should be recorded as what it is in this Report. We feel strongly that, at the outset, the powers of both the Houses should be equal in all cases, and it must be left to gradual evolution whether there shall be any differences later on. In the constitution there should be no distinction, with regard to any power or any authority in any matter, between the two Houses.

*Mr. Iyengar:* I think that the general trend of opinion, as Sir Muhammad Shafi put it, is that Money Bills should originate in the Lower Chamber, and that the Upper Chamber should have the powers over them, as over other Bills, which naturally pertain to an Upper Chamber. In regard to votes of Supply and Demand, the position to-day is that only the Lower House votes for Supply in India. This proposal is to vest this power, which is now solely the prerogative of the Lower Chamber, in both Chambers, with equal power. I desire only to submit that, having regard to the procedure so far followed in the Indian Legislature, the proposal suggested in this Report would be most cumbersome. We have discussed it in detail. There are about a hundred Grants to be put before the House, and ten to fourteen days pass during which Grants are discussed from time to time, and at the end of which there is a guillotine and the closure is put finally. If every Grant and every amendment of a Grant is put in the Lower House, discussed and voted upon; then it goes to the Upper House, where there are amendments thereon; and then, upon a matter whether Rs. 50 should be deducted or Rs. 500 should be deducted, again it goes to the Lower House, and there is a Joint Session over these things. I submit, Sir, that that will constitute an intolerable obstruction to the procedure which should be established in regard to the passing of the Budget. It is not like the state of things in this country, My Lord, where there are Committees of Supply and Committees of Ways and Means sitting right through the year. Our procedure is that on the 1st April . . . . .

*Chairman:* I need not trouble you further, Mr. Iyengar. I think it is pretty clear. I think these paragraphs will want considerable alteration. This is what I think we ought to report. I will get the language soon. I think I must put it as a preponderating majority or a large majority of British India. If you like, I will put it as a very large majority, in fact I think I might almost say the opinion with one exception; but I will not trouble about that, "are in favour of the Lower House voting Supply, and with regard to Money Bills they are in favour of their originating in the Lower House with a right of the Upper House"—

*Sir Muhammad Shafi:* After the Money Bill has been introduced in the Lower House and has passed through that House, it will go up to the Upper House just as any other legislation.

*Sir Samuel Hoare:* Yes, just as any other legislation; that is important.

*Sir Muhammad Shafi:* The distinction is that, while all other Bills—Bills other than Money Bills—may be originated either in the Upper or Lower House, Money Bills will be introduced in the Lower House. Otherwise they will stand on the same footing as other legislation.

*Chairman:* I think we must report that a large majority, with one exception, were in favour of that view.

*Mr. Zafrullah Khan:* I think it had better be put that British Indian opinion was almost unanimously . . . . .

*Chairman:* Yes.

*Mr. Gavin Jones:* In my speech on this subject, I quoted the Australian Constitution and suggested that should be the clause put in.

*Sir Muhammad Shafi:* There is no difference at all between my proposal and the Australian Constitution. If you turn to my speech you will find I gave the exact references to the Sections. What the Australian Constitution also lays down, to the best of my recollection, is that Money Bills should be introduced in the Lower House, should originate in the Lower House. That is all I want, that they should originate in the Lower House. And, Lord Chancellor, if you will permit me, I should like to add one observation. As I say, for ten years past—we are now in the eleventh year—this has been the practice in India; and I know of no school of thought in India, whether European or Indian, which has, before this Round Table Conference, ever raised any objection to the existing practice.

*Sir Tej Bahadur Sapru:* Arising out of this discussion, may I further point out that it will be necessary for us to come to some decision as to whether you will give the Upper Chamber the right merely of rejecting or also of amending the Money Bill—because that is a matter upon which constitutional practice is divided from country to country, and we have got to arrive at a conclusion upon it. That is a very material point. We know, as a matter of fact, that Money Bills can be amended in certain constitutions, while in other constitutions we know equally well that they cannot be amended. That is a question of policy and on that I do not think there has been any discussion. We have got to arrive at some conclusion.

*Chairman:* Well, what is your view, Sir Tej?

*Sir Tej Bahadur Sapru:* I would give the right of rejection, but I would not give the right of amendment, because that destroys the unity of the Budget, the unity of the taxation proposals as they emerge from the Ministry and as they have been supported by the Lower House. That is my humble opinion.

*Sir Muhammad Shafi:* Our view on this side is that, on the general principle that the greater includes the less, power of amendment also should rest in the Upper House. What will follow is this. Where any particular provision in a Money Bill is amended by the Upper House, it will be sent down to the Lower House, and the Lower House will have an opportunity of reconsidering the position. If the opinions are divergent until the end, then there will be a Joint Session of the two Houses to decide the question. We hold that the power of rejection, as well as of amendment, should rest in the Upper House.

*Chairman:* Let me get it right. I will come to the States in a minute. I propose to alter the Report so as to give effect to

what appears to me to be the unanimous view of British India, subject to Mr. Gavin Jones. There is no difficulty about Supply: that is the Lower House. With regard to Money Bills, again British India is unanimous, subject to Mr. Gavin Jones, that Money Bills originate in the Lower House, but that they can go to the Upper House. Then, what function has the Upper House?

*Mr. Joshi:* In this connection may I call attention to the fact that you are proposing to give power to the Government to introduce a Bill in the Second Chamber even after its rejection by the Lower House.

*Mr. Iyengar:* A Money Bill according to our present proposal should originate in the Lower House.

*Mr. Joshi:* I am not talking of origination. If you originate a Money Bill in the Lower House, and it is rejected there, you are giving power to the Government to re-introduce the same Bill.

*Mr. Iyengar:* No, no. It cannot originate again in the Upper House merely because of the rejection. It will always originate in the Lower House.

*Mr. Joshi:* Then, if a Money Bill is rejected by the Lower Chamber, it cannot be introduced again?

*Mr. Iyengar:* No, it cannot.

*Chairman:* I quite see your point, Mr. Joshi, but in law there is a maxim which talks about *enumeratio unius*. I do not think you need trouble about the matter, because if a Money Bill originates in the Lower House and is knocked out there, it cannot originate in the Upper House again. With regard to Money Bills, I want to get you all into line, if I may. They originate in the Lower House. When it comes to the Upper House I think you had better be as unanimous. As I understand, the two positions are these. Sir Tej says rejection only. Sir Muhammad Shafi says amendment as well. Do you not think we had better say amendment as well, and leave it like that?

*Mr. Sastri:* That is the present practice in India.

*Sir Tej Bahadur Sapru:* I will not insist. Let there be unanimity.

*Chairman:* Then I shall report like that. Now, with regard to the States, if you will allow me, Sir Akbar, I assume that the States take a rather different opinion. May I put down that the unanimous view of the States is the opposite?

*Members:* No, no.

*Chairman:* Then shall I say that a large number of the States took the opposite view?

*Sir Akbar Hydari:* I thought it was unanimous on this side.

*Chairman:* So did I.

*Sir Samuel Hoare:* It is not quite "the opposite", for this reason. Apart from the question of initiation, you would agree anyhow that the Second Chamber could amend and reject a Finance

Bill. So that it is not sufficient to say that your position is the opposite. It is the opposite of one thing but not of all the things. The better course would be for the States to draw up two or three sentences which did express their view about this matter and put them against the other point of view.

*Chairman*: The only thing is the initiation, is it not?

*Sir Akbar Hydari*: Yes.

*Chairman*: We can make that all right then. I understand that the other side is unanimous that in both cases, Supply as well as Grants, the initiation is in the Lower House, and Supply is for amendment in the Upper House.

*Sir Tej Bahadur Sapru*: May I be permitted to point out that what we are trying to bring about is that, so far as the Money Bill is concerned, it should always be introduced in the Lower House, power being reserved to the Upper House to reject it or amend it; but so far as the voting of Supplies is concerned, that is a function which purely appertains to the Lower House, and should be outside the scope of the Upper House. I want to explain that, because it is desirable that there should be no misunderstanding on a very important point of substance of this character.

*Chairman*: The only difference between you gentlemen is this. You are agreed absolutely on everything except one point. Sir Akbar says, initiation of Money Bills in either House; you say, initiation of Money Bills in the Lower House only. Now, that is the difference between you. There is no difference with regard to Supply; there is no difference with regard to rejection or amendment, or anything like that.

*Sir Mirza Ismail*: There is a difference with regard to that.

*Sir Akbar Hydari*: There is a difference with regard to Supply, because they say that Supply does not go to the Upper House at all, whereas we say it must go up.

*Chairman*: All right: you want Supply in the Upper House.

*Sir Samuel Hoare*: To put it into concrete form, you want the procedure that we have here—namely, that Supply goes into what is called an Appropriation Bill that goes to the Second Chamber.

*Sir Akbar Hydari*: Yes, quite.

*Sir Samuel Hoare*: We could easily get that clear.

*Mr. Iyengar*: I do not know whether it is correct to describe the procedure in the draft as that of an Appropriation Bill. It has been put down here in the form in which it at present exists in the Indian Legislature—namely, in the form of Demands for Grants. Say a Demand for Customs is put forward, that is put forward by the Lower House and it goes to the Upper House. They demand a thousand rupees less. Then it comes back again, and we say, "No, only five hundred rupees less", and that is decided. So far as a Demand for Customs is concerned, that is put forward as a Demand from both Houses. Your Appropriation Bill is an entirely different thing.

*Sir Samuel Hoare* : Yes, I thought Sir Akbar was not altogether contented with the existing practice in India. I am not giving my view one way or the other, but what I wanted to do was to get Sir Akbar's view quite clear.

*Mr. Iyengar* : I think there is a confusion about this. If I may say what the position is . . . . .

*Chairman* : Just wait a moment. There is no doubt what British India wants; the only doubt is as to the position of the States. First of all, Sir Akbar, will you kindly tell us what you want with regard to Supply?

*Sir Akbar Hydari* : With regard to Supply, what I want is that the Demands for Grants should be discussed and subject to revision in both Houses. That is what I want.

*Chairman* : Very well; and with regard to Money Bills?

*Sir Akbar Hydari* : In regard to Money Bills, the same.

*Chairman* : Now, that resolves the difficulty. I think I will draw up the Report by saying, as Mr. Zafrullah Khan suggested, that the representatives on the British India side are practically unanimously in favour of what they have said.

*Mr. Gavin Jones* : I am supporting the States' view.

*Chairman* : Yes, I said "practically". Now, with regard to the States, what am I to say—that the view of the majority is, or that the view of the States is?

*Sir Akbar Hydari* : The view of the States is.

*Sir Mirza Ismail* : The majority.

*Chairman* : Very well; that is good. Now I have got majorities both ways.

*Sir Samuel Hoare* : On each side it is practically unanimous, is it not?

*Chairman* : Now we come to Lord Peel's Report on Federal Finance, paragraph 44. We need not take any time over this; I think it was agreed the other day.

*Mr. Zafrullah Khan* : There is one word which I wish to say with regard to paragraphs 44-51 at this stage. I raised certain points in my speech, and I do not want to repeat them. I find that a good many of them are covered by (a) to (d) of paragraph 48, and (i) to (iii) of paragraph 49. My only hope is that the Committee to be appointed will keep those points in mind.

*Mr. Gavin Jones* : One point that I should like to get cleared up is in paragraph 43: is it a bare majority?

*Chairman* : Yes, the bare majority we have passed. You disagree with that, do you; you want two-thirds?

*Mr. Gavin Jones* : Or 60 per cent.; that would make it equal.

*Chairman* : Mr. Gandhi has been good enough to give me this note to read with regard to what we have done up to now :—

“ Being silent, I would like to express my dissent in writing from the draft Report in the following among other matters :—

I adhere to the view that one Chamber would be the best for the purpose intended to be served. But subject to certain vital modifications, I would be prepared to support Sir Mirza Ismail's proposal, if the body contemplated by him becomes an advisory body.

The Congress is wholly opposed to the special representation of the interests of Landlords, European and Indian Commerce, and Labour. Representatives of these interests should appeal to the common electorate for their election.

The Congress is similarly opposed to the nomination of members. But specialists should have facility given to them to address the Chamber on required occasions.

There is much I would like to say with reference to the paragraphs about the States, specially on the matter of the representation of the subjects of the States. But I reserve my opinion for the time being. I adhere to the proposal I had the privilege of making on indirect election, or rather, election through delegates, using the villages as units. This scheme is based on adult suffrage, to which the Congress is pledged.

M. K. GANDHI.”

Paragraph 44, Federal Finance.

*H.H. The Nawab of Bhopal* : I desire to bring it to your notice, My Lord, and to that of the Committee, that what was included in my statement made before this Committee the other day is the actual position of the States, as far as the Chamber of Princes is concerned, in regard to Federal Finance. I repeat this, because there is a slight difference of opinion in one or two matters concerning the States between that Chamber and Lord Peel's sub-Committee. I would only add that, on Committee number two, the officials should be both British and from the States.

*Chairman* : Paragraph 48, please.

Paragraph 49.

*Dr. Ambedkar* : I should like to say that the Committee should also consider the necessity of endowing the Central Government with powers to finance itself in emergency matters directly and independently, rather than be dependent upon contributions from the Provinces and States.

*Lord Peel* : All these points, of course, were considered from every point of view, and this was the result of a compromise between the different views. That is really all I can say on it at the present moment, I think.



*Mr. Joshi:* Lord Chancellor, I agree with Dr. Ambedkar's view.

*Dr. Ambedkar:* Lord Chancellor, I should also like to say that the fact-finding Committee, in apportioning the burden of the Federal Legislature between British Provinces and Indian States, ought to consider the principle of equity of contribution as between the two.

*Chairman:* Lord Peel no doubt will consider that. I wish you would mention that again, if you would not mind, when we come to the full Conference.

*Sir Mirza Ismail:* With reference to paragraph 49, (ii):—

“The initial amount of the Contributions from the Provinces and the precise period within which these and the States' contributions are to be wiped out.”

I must take exception to the States' contributions being placed on the same footing as those from the Provinces. My reasons are clear. In the first place, the cash contributions from the States—at any rate from many of them—are really in the nature of tributes, and, as is universally admitted, cannot have a place under the Federation. In the second place, the implication of the paragraph that such payments are made by all the States is, as the Committee is aware, entirely contrary to the fact. It is only comparatively few States that do so; and of the total charge, nearly 40 per cent. comes from a single State. As the principle of abolition is accepted in the Report, it seems to me quite unnecessary to make any reference on the subject to the proposed Committee. Why should we allow this differentiation to check the progress towards Federation, for the sake of a total which, after due deductions are made, will not perhaps amount to more than Rs. 50 lakhs? I therefore make a definite request to the Committee to settle this comparatively simple matter by a direct, instead of an indeterminate, decision—in other words, to agree to the abolition of these imposts.

*Chairman:* That will be a matter for the Committee. Would you like (ii) to be redrafted so as to make it quite clear that there is a difference between the Contributions of the Provinces and what are called the States' contributions—for them to be put into two separate paragraphs?

*Sir Mirza Ismail:* I take it that the States' contributions are included under paragraph 47, are they not?

*Chairman:* Yes, that is right.

*Sir Mirza Ismail:* I would suggest the entire omission of the reference to the States' contributions in this paragraph.

*Lord Peel:* To meet Sir Mirza's point, I think it could also be made clear, if it is split into two paragraphs, that the contribu-

tions are from certain States. You wanted that made clear, Sir Mirza?

*Sir Mirza Ismail*: Yes.

*Sir Samuel Hoare*: Will you put in a special sentence?

*Chairman*: I would simply break up (ii) into two parts:—

“ The initial amount of the Contributions from the Provinces and the precise period within which these are to be wiped out.”

Then there would be the precise period in which the States' tribute, or whatever it is called, would be wiped out.

*Sir Samuel Hoare*: I should have said another sentence at the end: “ Special cases ” or “ the cases of contributions from certain States should be considered in the same connection ”, or something of that sort.

*Sir Mirza Ismail*: That is going to be done in connection with paragraph 47 by the second Committee. This matter will have to be settled before the Federation comes into operation.

*Chairman*: We will make it clear that it is a contribution from certain States only.

*Mr. Iyengar*: Lord Chancellor, Perhaps the point could be brought out in this way. The two things are different. We should say: “ The initial amount of the Contributions, if any, from the Provinces ”—because they may make such a scheme as will avoid the payment of Contributions. The second is the question of the abolition of the States' contribution.

*Sir Provash Chunder Mitter*: I have an observation to make with regard to sub-paragraph (i) of paragraph 49. The first item on page 6, paragraph 10, of the Report of Lord Peel's sub-Committee is with regard to External Customs including Export duties. I have submitted a Note on export duties on jute. I have since consulted the Bengal Delegates, and their opinion is that Export duties ought to be excluded. Their opinion, further, is that Bengal has no use for any form of government if over 90 per cent. of the Export duties have to be contributed by Bengal alone. The Jute duties contribution from Bengal represent over 90 per cent. of the total Export duties. Not only is there this Export duty on jute, but about Rs. 2½ crores is contributed by Bengal as Income-tax on jute business, besides other Income-tax from other sources. To the Income-tax we cannot object; but all the members of the Bengal Delegation are unanimous in the view that, if the majority of the members here insist on this, then we have no use for any kind of constitution, for the simple reason that Bengal cannot function. Those who try to follow the real position of Bengal will have no difficulty in coming to the conclusion that we are heading towards a very difficult state of things in that Province.

(The Committee adjourned at 3-55 p.m.)

PROCEEDINGS OF THE FORTY-FIFTH MEETING OF THE FEDERAL  
STRUCTURE COMMITTEE, HELD ON THE 4TH NOVEMBER, 1931,  
AT 11-0 A.M.

DISCUSSION ON THE DRAFT THIRD REPORT (*concluded*).

*Chairman:* Your Highnesses and Gentlemen, We now have to consider the draft Report with regard to the Federal Court. I do not think it will occupy your time for very long. I propose to do what I did with regard to the other Report, namely, to read it through, and then to take each paragraph.

*(The Chairman then read paragraphs 52-66 of the draft Third Report.)\**

52. *The Federal Court.*—The necessity for the establishment of a Federal Court was common ground among all members of the Committee, and such differences of opinion as manifested themselves were concerned for the most part with matters of detail rather than of principle. It was recognised by all that a Federal Court was required both to interpret the constitution and to safeguard it, to prevent encroachment by one federal organ upon the sphere of another, and to guarantee the integrity of the compact between the various federating Units out of which the Federation itself has sprung.

53. The first question which the Committee considered was the nature of the Court's jurisdiction, and it was generally agreed that this jurisdiction must be both original and appellate.

54. The Court ought, in the opinion of the Committee, to have an exclusive original jurisdiction in the case of disputes arising between the Federation and a State or a Province, or between two States, two Provinces, or a State and a Province. The Committee are of opinion that disputes between Units of the Federation could not appropriately be brought before the High Court of any one of them, and that a jurisdiction of this kind ought rather to be entrusted to a tribunal which is an organ of the Federation as a whole. It would seem to follow that the Court should have seisin of justiciable disputes of every kind between the Federation and a Province or between two Provinces and not only disputes of a strictly constitutional nature, but that in the case of disputes between the Federal Government and a State, between a State and a Province, or between two States, the dispute must necessarily be one arising in the federal sphere, since otherwise the jurisdiction would extend beyond the limits of the Treaties of cession which the States will have made with the Crown before entering the Federation. The Committee are disposed to think that decisions by the Court given in the exercise of this original jurisdiction should ordinarily be appealable to a Full Bench of the Court.

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\* These paragraphs, as amended in consequence of the ensuing discussion, are printed as paragraphs 52-66 of the Third Report of the Federal Structure Committee, *see pages 943-949.*

55. In the case of disputes arising between a private person and the Federation or one of the federal Units the Committee see no reason why these should not come in the first instance before the appropriate Provincial or State Court, with an ultimate right of appeal to the Federal Court, since it would obviously be oppressive to compel a private citizen who had a grievance, however small, against, say, his Provincial Government, to resort exclusively to Delhi, or wherever the seat of the Federal Court may be, for the purpose of obtaining justice. In this case also, however, whatever right of suit against a State in its own Courts is accorded to a citizen of that State, must even in a dispute arising in the federal sphere, be regulated by the laws of that State, though the citizen who is given a right of suit by the State law could not be deprived of his right of access to the Federal Court by way of appeal, whatever form that appeal may take. In this connection the Committee draw attention to the need of investing both Provinces and States with a juristic personality, for the purpose of enabling them to become parties to litigation in their own right. The Committee understand that at the present time no action lies against a Province of British India as such, and that no action can be brought against an Indian Prince in a British Indian Court save under very special conditions. On the other hand, the Committee are informed that in some of the States provision has already been made whereby proceedings can be taken against the State in its corporate capacity as distinguished from the ruler of the State himself. This subject will require to be further examined.

56. The Federal Court ought also, in the opinion of the Committee, to have an exclusive appellate jurisdiction from every High Court, and from the final Court in every State, in all matters in which a question of the interpretation of the constitution (using that expression in its broadest sense) is involved. A certain difference of opinion on questions of method has, however, to be recorded. The suggestion was made that some plan might be devised whereby anyone desiring to challenge the constitutional validity of a law passed by the Federal or a Provincial Legislature could obtain a legal decision on the matter at an early date after the passing of the Act, and that this might be done by means of a declaratory suit to which some public officer would for obvious reasons be a necessary party. The advantages of some such procedure are manifest, and the subject deserves further examination. Assuming, however, that legal proceedings of this kind are found possible, the Committee think it right that they should be confined to the Federal Court alone, at any rate where the validity of a Federal law is in issue, though there was a difference of opinion upon the question whether in the case of a Provincial or State law the proceedings might not be permitted in the first instance in the appropriate High Court or State Court. Where, however, a constitutional issue emerges in the course of any ordinary litigation the tribunal which may have seisin of the case should have jurisdiction to decide it, subject always to an ultimate right

of appeal from the State Court or High Court (if the case gets so far) to the Federal Court.

57. The form which the appeal should take might be left to be dealt with by Rules of Court, but, whatever form or forms are adopted, the Committee are clearly of opinion that there must be an ultimate appeal as of right to the Federal Court on any constitutional issue. Their attention was drawn to a very convenient procedure at present existing in British India whereby, when a question of title is raised in a Revenue Court, a Case can be stated on that point only for the opinion of the Civil Court, proceedings in the Revenue Court being suspended until the decision of the Civil Court is given; and they think that the possibility of adopting a procedure of this kind might well be explored. They understand in particular that a procedure on these lines would be the procedure most acceptable to the States. The Committee are however impressed with the need for discouraging excessive litigation, and recommend therefore that no appeal should lie to the Federal Court, unless the constitutional point in issue has been clearly raised in the Court below.

58. The suggestion that the Federal Court should for federal purposes be invested with some kind of advisory jurisdiction such as that conferred on the Privy Council by Section 4 of the Judicial Committee Act, 1833, met with general approval, and the Committee adopt the suggestion subject to certain conditions. In the first place they are clear that the right to refer matters to the Court for an advisory opinion must be vested exclusively in the Governor-General, acting no doubt in the normal case on his Ministers' advice; and secondly, they think that no question relating to a State ought to be referred without the consent of that State.

59. The Committee are of opinion that an appeal should not lie from the Federal Court to the Privy Council, except by leave of the Court itself, though the right of any person to petition the Crown for special leave to appeal, and the right of the Crown to grant such leave would, of course, be preserved. There would therefore be no right of appeal to the Privy Council direct from a High Court in any case where an appeal lay to the Federal Court. The Committee desire to emphasise here, in order to prevent any misunderstanding, that any right of appeal from the State Courts to the Federal Court and thence to the Privy Council in constitutional matters will be founded upon the consent of the Princes themselves, as expressed in the Treaties of cession into which they will enter with the Crown as a condition precedent to their entry into the Federation. There can be no question of any assumption by Parliament or by the Crown of the right to subject the States to an appellate jurisdiction otherwise than with their full consent and approval.

60. It will be necessary to provide that Federal, State and Provincial authorities shall accept judgments of the Court as binding upon themselves when they are parties to a dispute before

it, and will also enforce the judgments of the Court within their respective territories. It will also be necessary to provide that every Provincial and State Court shall recognise as binding upon it all judgments of the Federal Court.

61. The Committee think that the Court should be created, and its composition and jurisdiction defined, by the Constitution Act itself. They are of opinion that it should consist of a Chief Justice and a fixed maximum number of puisne Judges, who would be appointed by the Crown, would hold office during good behaviour, would retire at the age of 65, and would be removable before that age only on an address passed by both Houses of the Legislature, and moved with the fiat of the Federal Advocate General. The question of the salaries and pensions of the Judges is a delicate one. The Committee are clear that the salaries, at whatever figure they may be fixed, should be non-votable and incapable of reduction during a Judge's term of office, and it would be a convenience if the salaries could be fixed by the Constitution Act, or in accordance with some machinery provided by that Act. The Committee have no desire to suggest any extravagant figure, but they are bound to face facts, and they realise that in the absence of adequate salaries it is in the highest degree unlikely that the Federation will ever secure the services of Judges of the standing and quality required. They suggest that the matter might be referred to a small committee for investigation and report at a reasonably early date. With regard to the qualifications of the Federal Court Judges, the Committee suggest that any barrister or advocate of 15 years standing and any person who has been a Judge of a High Court or State Court for not less than three years should be eligible for appointment.

62. The seat of the Court should be at Delhi, but power should be given to the Chief Justice, with the consent of the Governor-General, to appoint other places for the sittings of the Court as occasion may require. The Court must also have power to make Rules of Court regulating its procedure. These rules should, after approval by the Governor-General have statutory force. The power to regulate the procedure of the Court should include a power to make rules enabling the Court to sit in more than one division, if necessary. The appointment of the staff of the Court should be vested in the Chief Justice, acting on the advice of the Public Services Commission, but the number and salaries of the staff must of course be subject to the prior approval of the Governor-General.

63. A strong opinion was expressed in the Committee that the time had come for the creation of a Supreme Court for British India to which an appeal should lie from all Provincial High Courts in substitution for a direct appeal to the Privy Council. Appeals from the Court would lie to the Privy Council only with the leave of the Court or by special leave. The creation of such a Court is in the natural course of evolution and the Committee adopt the suggestion in principle. A difference of opinion, how-

ever, manifested itself on the method whereby such a Court should be brought into existence. There was a strong body of opinion amongst the British Indian Delegates to the effect that the Federal Court should be invested with this further jurisdiction, the proposal being that the Court should sit in two divisions—one dealing with Federal matters and the other with appeals on all other matters from the Provincial High Courts. Other members of the Committee, and generally speaking the States' representatives dissented from this view, and were of the opinion that there should be a separate Supreme Court for British India on the ground that the Federal Court would be an all-India Court, while the Supreme Court's jurisdiction would be confined to British India; the mass of work with which it would have to cope would obscure its true functions as a Federal Court, and to that extent detract from its position and dignity as a Federal organ. It is no doubt the case that many more appeals would be taken to a Supreme Court situate in India than are at present taken to the Privy Council, and the Committee appreciate the force of this objection. But there would be no difficulty in reducing the appeals to a reasonable number by imposing more stringent restrictions upon the right of appeal. The Committee would deprecate the imposition on the finances of India of the cost of two separate Courts if this can possibly be avoided, and cannot disregard the possibility of conflicts between them. There is lastly at no time in any country a superfluity of the highest judicial talent, and the truer policy appears to them to be to concentrate rather than to dissipate judicial strength.

64. A question of very real difficulty remains to be considered, *viz.*, whether the Constitution Act itself should establish a Supreme Court now or whether power should be given to the Federal legislature to establish it either as a separate institution, or by conferring general appellate jurisdiction on the Federal Court as and when it may think proper so to do. The Committee are impressed with the need for proceeding cautiously in this matter, but it was urged on them that the opportunity should not be lost of settling once and for all the general outlines of a Supreme Court scheme. The establishment of a Supreme Court, and the definition of appellate jurisdiction are, they think, essentially matters for the Constitution Act, and it appears to them that in the circumstances it may be advisable to take a middle course. They recommend therefore that the Constitution Act should prescribe the jurisdiction and functions of the Supreme Court and that the Federal Legislature should be given the power to adopt these provisions of the Constitution Act in the future, if it should think fit to do so. The Committee recommend this method on several grounds. In the first place, the establishment of the Court would in any event require a large increase in the judiciary and in their view it should be left to the Federal Legislature of the future to decide whether the additional expense should be incurred or not. Secondly, the whole subject is one which requires much expert examination and it may be desirable that

experience should first be gained in the working of the Federal Court in its more restricted jurisdiction. Thirdly, the functions of the Federal Court will be of such great importance, especially in the early days of the Federation, that in the opinion of the Committee it would be unwise to run the risk of either overburdening it prematurely with work, or of weakening its position by setting up in another sphere a Court which might be regarded as a rival.

65. A proposal to invest the Supreme Court above described with jurisdiction to act as a Court of Criminal Appeal for the whole of British India also found a certain measure of support. It is clear that even if a right of appeal to this Court in the graver criminal cases were given, the work of the Court, and therefore the number of Judges would be enormously increased. The Committee had not the time at their disposal to enter into a close examination of the question whether in principle a Court of Criminal Appeal for the whole of British India is desirable, and they do not feel themselves able to express any opinion upon the matter, though they recognise its great importance. For the same reason that they have found themselves unable to recommend the immediate establishment by the constitution itself of a Supreme Court for appeals in civil matters from the High Courts of British India, they are unable to recommend the immediate establishment of a Court of Criminal Appeal. This matter is one which, in their opinion, must be left to the future Federal Legislature to consider, and if that Legislature should be of opinion that such a Court is required there will be no difficulty, if it should be thought desirable, in investing the Federal Court, or the separate Supreme Court, as the case may be, with the necessary additional jurisdiction. But the Committee cannot refrain from a word of warning. It appears to them probable that a Court invested with the various jurisdictions which were suggested in the course of the Committee's discussions would have to consist of probably as many as twenty or thirty Judges, and in all likelihood of many more. To create an entirely new Bench of this size would strain the judicial resources of any country, and it can scarcely be expected that the result would be satisfactory. The Committee are therefore strongly of opinion that one step only should be taken at a time and that experience should be gradually accumulated. They are anxious that the Court should have as great a prestige and dignity as it is possible to give it; but they are apprehensive of the grave risks which in their opinion would be run if it were set a task at the outset of its career which, through no fault of its own, might prove to be beyond its capacity.

66. The subject of the Provincial High Courts in British India was also touched upon in the course of the Committee's discussions, and they think it right to record their views on one or two points of importance connected with this subject. In the first place, the Committee are of opinion that High Court Judges should continue to be appointed by the Crown. Secondly, they think that the



existing law which requires certain proportions of each High Court Bench to be barristers or members of the Indian Civil Service should cease to have effect, though they would maintain the existing qualifications for appointment to the Bench; and they recommend that the office of Chief Justice should be thrown open to any puisne Judge or any person qualified to be appointed a puisne Judge. The practice of appointing temporary additional Judges ought, in the opinion of the Committee, to be discontinued.

*Chairman:* Now, that is the Report on which I want your comments. Will you kindly go back now to paragraph 52?

*Dr. Ambedkar:* May I just say this with regard to paragraph 52? Your Lordship will remember that, while we were discussing the jurisdiction of the Federal Court, I raised the point that the Court, besides having the jurisdiction to interpret the constitution and to see that neither the Provincial Governments nor the Federal Government intervene in the sphere of the other, should also have the jurisdiction to deal with matters arising out of the fundamental rights or the minority rights. I think I was supported in that also by Mr. Jayakar, and also, if I am right, by Mr. Sastri. Perhaps a note might be made to that effect in this paragraph.

*Chairman:* I am obliged to Dr. Ambedkar, but I am happy to be able to reassure him in this way—that when they are in the constitution, they will naturally fall within the domain of the Federal Court's interpretation.

*Mr. Jayakar:* That is included in the word “constitutional”.

*Chairman:* Now paragraph 54.

*Mr. Gandhi:* There is a reference to “treaties of cession”. I do not know whether Sir Samuel Hoare can give any information on this. Will these treaties be secret treaties or open treaties?

*Sir Samuel Hoare:* Lord Reading says that he thinks there are no private treaties of any kind.

*Sir Tej Bahadur Sapru:* That is so.

*Mr. Gandhi:* But will the new treaties all be public?

*Lord Reading:* I think, in a matter of this character, when you are dealing with rights which have to be ceded, that those who are interested in the constitution, and who are framing it, and who are taking part in it, and who are co-operating with it, must know what the treaty obligations are between the States and the Government of India.

*Chairman:* Now paragraph 55.

*Sir Akbar Hydari:* I am not quite clear about paragraph 55. You are referring to disputes arising between a private person and the Federation, and your language is this. It simply states, in very general terms, that:—

“ In the case of disputes arising between a private person and the Federation or one of the federal Units, the Committee see no reason why these should not come in the first

instance before the appropriate Provincial or State Court, with an ultimate right of appeal to the Federal Court, since it would obviously be oppressive to compel a private citizen who had a grievance, however small,"

there, again, it is very general. It does not say a grievance arising out of a federal matter, but—

" a grievance, however small, against his Provincial Government, to resort exclusively to Delhi, or wherever the seat of the Federal Court may be, for the purpose of obtaining justice. In this case also, however, whatever right of suit against a State in its own Courts is accorded to a citizen of that State, must, even in a dispute arising in the federal sphere, be regulated by the laws of that State," and so on.

So the wording is such that, in the first instance, even although it does not arise in the Federal sphere, nevertheless if it is a suit of a private person against a federating Unit, he has got the right of ultimate appeal to the Federal Court.

*Chairman* : I think we had better make it absolutely clear, because I see what you mean with regard to those words—they might give a right of appeal in a perfectly domestic matter.

*Sir Akbar Hydari* : With regard to disputes arising in the Federal sphere, I should like one or two points to be made clear to me. You will remember, Lord Chancellor, that, when we were discussing which subjects should be Federal, we said that certain subjects should be Federal for policy and legislation, but not for administration. If there was a dispute which arose out of the administration of such a subject, would that be a matter arising in the Federal sphere?

*Chairman* : I should like to think that over; it is a very general point. I see what you mean—what you say is in effect this—the administration is your concern, and therefore you want to be clear about an appeal on administration.

*Sir Samuel Hoare* : You wish that there should be no appeal on administration?

*Sir Akbar Hydari* : Yes.

*Lord Reading* : That is a matter of importance if you are going to deal with matters in the Federal sphere, because if it is a matter of administration in the Federal sphere it is going rather far to say that there should be no appeal to the Federal Court, is it not? I do not want to pronounce a definite opinion on the matter hurriedly, but I understood from this that, in the case of anything which affected Federal matters, there would be right of appeal. As I understand the basis of this paragraph, it is this; you do not want to force everybody in India to have to go to Delhi, or wherever the seat of the Federal Supreme Court may be, in order to originate his complaint. What you are wanting to do is to give everybody in the Provinces or the States a right to begin a suit within his

own State. So long as it relates to a matter in the Federal sphere, he can begin it in his own State instead of having to go to Delhi; but then he has a right of appeal. And that would apply, I should think, as much to administration as to anything else.

*Sir Akbar Hydari*: The case to which I am referring is where the administration is non-Federal, and I am thinking of what would happen in a case arising in regard to such administration—that is my point.

*Lord Reading*: I see what you mean. If it has nothing to do with administration in the Federal sphere, there is no reason why he should have the right of appeal to the Federal Court. He has not had a right of appeal hitherto except to his own State. That must be right.

*Chairman*: We will see that is made clear. Have you any other point on that, Sir Akbar?

*Sir Akbar Hydari*: I do not think I have anything further to say.

*Chairman*: I hope you will not consider it an impertinence for me to congratulate you, as the representative of Hyderabad, on the very interesting and pleasing announcement we have seen in the "Times" to day.

*Sir Akbar Hydari*: Thank you, Sir.

*Mr. Jinnah*: 54 and 55 are more or less inter-connected. Paragraph 54 lays down what will be vested in the Federal Court. The first thing that the Report says is this, that it will have jurisdiction over matters strictly of constitutional nature. That is one. Well, that I can understand. Any matter of strictly constitutional nature will be vested in the Federal Court, and arising between the Federation and a Province, or a Unit, or between two Units. Then the Report proceeds further:—

".....but that, in the case of disputes between the Federal Government and a State, between a State and a Province, or between two States, the dispute must necessarily be one arising in the Federal sphere."

Now, I do not understand what those disputes will be. It is too vague and too general. My submission is that you must specify what are those disputes which are likely to arise in the Federal sphere. It conveys no idea to me.

*Chairman*: I follow what you mean. Of course, you and I would agree that it is very difficult to put down a category of things now, because, however prophetic you are and however clever you are, something always turns up which you ought to have put in, but which is not put in. So that what we have rather meant to do is to leave it as general as possible at present. Later on it may be that your point will have to be very carefully considered. All I can say is that, at the present moment, I am not prophet enough to put it in. I am sure you follow my point?

*Mr. Jinnah* : I do.

*Chairman* : You are a better prophet than I am; perhaps you will make a suggestion.

*Mr. Jinnah* : I have never pretended to be a prophet—I am a humdrum ordinary person. And therefore I want to see what I am agreeing to. As to the first part, there is no difficulty; any constitutional matter—a matter arising out of the constitution or relating to the constitution—I can understand that. But when you say it will have jurisdiction with regard to matters arising in the Federal sphere, I do not understand it. Therefore, I would ask you please, to make a note that those Federal spheres must be properly defined; and that should not include Federal laws.

Now, as to the next point which Sir Akbar Hydari raised on paragraph 55—in the case of disputes arising between private persons—here we are concerned with private persons and the Federation or Units. Here again, you only say disputes. What kind of disputes? They must be specified or defined.

Then, with regard to paragraph 55, further, I do not agree with the jurisdiction being given to the Courts of the Provinces or the Units with regard to any question that arises out of or relates to the constitution. It must be decided by the Federal Court.

*Chairman* : Will you say that again?

*Mr. Jinnah* : I will say that disputes that may arise between a subject and a State, relating to the constitution or arising out of or under the constitution, must be decided by the Federal Court and not the Provincial Courts. I think it would be very dangerous to do otherwise. It is said here that you will put the parties to a great deal of inconvenience and expense, although the matter may be a very small one. Well, Sir, I conceive this that if there is a dispute between the Units relating to the constitution or arising out of the constitution, or between the Federation and the Units, then the Federal Court will have exclusive jurisdiction; but if the question arises between a subject and a State or the Federation, then you relegate it to an ordinary Provincial Court. It would not be a small matter if the question related to the constitution or arose out of the constitution. It would be a suit of a representative character; and if the parties were determined to press their contention then would you relegate them to an ordinary District Court or a District Judge, appeal against that decision to the High Court and then appeal to the Federal Court? Or would you say that, if it happened to be in the Presidency towns, the dispute must first go to a single Judge, then an appeal to the Division Bench and then to the Federal Court? Would that be less expensive? Further, I say that you must make no distinction between a subject and a State, or a State and a State, or the Federation and a State, because as regards the questions that will arise we are strictly confining ourselves to the constitution; and therefore I submit that it will be undesirable—because

our experience is this, Sir, that when you have got a highest Court vested with jurisdiction of an appellate character, the litigants will never be satisfied until they have got the decision of that final Court.

*Chairman:* I agree with everything you have said except the last sentence, and I want just to put this view before you, if I may. Very often people may be in two positions. The first position is this—it is not a very complimentary one to the Judges; the second is a complimentary one. I will put the uncomplimentary one first. Very often people say, “Now, there is some point between us, and all we care for is a decision; it does not very much matter which way the decision is, because what we want to get is a decision, and everybody will be perfectly satisfied with the decision of the Judge.” I have known that pretty often, especially in Company matters; but we will not trouble about that. Now let us put the case which is complimentary to the Judges. Supposing two people have a dispute, and the Judge decides it in such a way that both of them say, “Well, that decision is absolutely right.” Very often a Judge is right, you know, because he is not prejudiced. One party says, “Oh, I think A is right,” and the other party says, “I think B’s interpretation is right,” and then they get a really first class Judge, and they say, “The Judge is right; after all, he sees the whole thing”—and they do not want to appeal. I am only putting for your consideration whether it is not possible to allow, at any rate, these local things to go first to a lower Court for those two reasons—the one because people want a decision and they do not much care what the decision is—because they have got to have a decision—and the other thing is that the judgment may appeal in such a way to both of them that neither of them wants to go farther.

*Mr. Jinnah:* I see your argument, Sir, but here the only distinction I make is this, that this litigation which will be relating to the constitution or arising out of the constitution will be not of an ordinary character—not like matters arising under the Companies Acts and so on. The people will not raise the point unless there is a grave objection to it. Remember, they are dealing with the constitution; they are not dealing with ordinary disputes like the Companies Acts or the Contract Act, and so on. If you had a particular party—we will say here we are dealing with subjects; you can see it in the case of States and Provinces, of course—why should that not be done in the lower Courts? Why not? I see the force of it, because this is such a grave issue. The issue that will be raised will be a grave one—that there is a breach or a fundamental infringement of a fundamental right under the constitution. Well, a question of that character should not be left to a local tribunal, and if you do leave it, let me tell you, Lord Chancellor—you, of course, have very great experience of your Courts, as I have some experience of my Courts—that although I agree with you that the Judges always try to decide right, you must remember that one party thinks always that the decision is

wrong—at least one party thinks so. And, in a matter of this character, you only compel them to go through the whole range of these Courts, and ultimately the Federal Court will have to decide.

*Chairman*: I am very much obliged to you for raising the point, because it does need very careful consideration, and it must have careful consideration before the Bill is drawn up. The only point I would like to ask Mr. Jinnah, if he would kindly help me with regard to it, is this. Can you imagine a case—I am only talking about our own country—where the parties ought to be able to say, “Well, we do not want to fight this case before the Judge of first instance, and as for the Court of Appeal, we do not want to go before it; this is so important, let us go to the House of Lords at once”?

*Mr. Jinnah*: Oh yes, I do. There are cases where the practice will not be satisfied until there is a decision of the final Court.

*Chairman*: The last point I want to worry you about now is this. In the instance I have just put to you, you said, “Well, I would very much like in England not to go before the King’s Bench Division and not to go before the Court of Appeal, but to go straight to the House of Lords, because that is where my last haven is going to be.” Would you have witnesses before the House of Lords? Is the House of Lords to find the facts or is the Court of first instance to find them?

*Mr. Jinnah*: We are contemplating here that a Federal Court will sit as an original Court with a single Judge. The single Judge of the Federal Court will deal with a case—where there is a case—on the evidence; and then will come the Appeal Court. You are contemplating that here.

*Lord Reading*: May I make one observation with reference to Mr. Jinnah’s remarks—not for the purpose of continuing the argument but in order that it should be kept well in mind when the draughtsman or the drafting committee sets to work to draw up the clauses with relation to this Act. What is of the utmost importance, I submit, is that you do not want to add to the multiplicity of law suits in India, with their enormous expenditure of time and money in every direction. The great danger that I see is this—and I only throw it out as a thought which will have to be considered when you come to the matter—if you were to confine the proceedings relating to constitutional matters solely to the Federal Court (and I speak with some experience, in the past at any rate, of the ingenuity of lawyers in finding devices by which they can, in the interest of their clients, postpone a decision which otherwise had to be given), I look with some horror upon the prospect of a man in a Provincial Court or in a State Court being able to say, as he would in one eventuality which was put to him, “Ah, this raises a constitutional point. It may be rather remote, but it is a constitutional point. You have no jurisdiction. This must, therefore, go to the Federal Court. There must be an adjournment

for the purpose." And then you get all the difficulties of that. Instead of which, by the other course—the course proposed—it is left open to the Court there to decide the point if it arises in that way, with a right of appeal to the Federal Court which is specially charged with Federal matters. I think it is most important to bear that in mind. Certainly, from my experience of watching, but taking no part in, proceedings in India, I do think that you must be most careful not to give further opportunities of delay and unnecessary expenditure.

*Mr. Joshi:* I want to know, Lord Chancellor, what was the final interpretation on the point raised by Sir Akbar Hydari, whether there is to be an appeal in those suits which concern the administration of Federal matters. For instance, there may be a suit by a private person with regard to the administration of railways, which may be administered by a State, but the policy and the laws may be passed by the Federation. With regard to such a suit, I want to know whether there will be an appeal to the Federal Court or not.

*Chairman:* I am not sure that I have followed your point correctly. Are you taking the case, for instance, of a suit in Hyderabad with regard to the administration of the railways?

*Mr. Joshi:* Yes.

*Chairman:* Could you give me a rather more concrete example than that?

*Mr. Joshi:* Yes, a suit for recovering damages for an injury received by a man in a railway train.

*Chairman:* I doubt whether that is the administration of the Federal Constitution.

*Sir Tej Bahadur Sapru:* That is a purely judicable matter and does not affect Federal administration. My Lord, there is one point which arises out of the remarks which Mr. Jinnah has made to-day, which I should like to have cleared up. He asked Your Lordship to see to it that the word "dispute" in paragraph 54 was carefully defined, and at the same time he added that, whatever might be the definition that you give, it must not include Federal laws. Now, I want to understand clearly what he means by saying that it must not include Federal laws. The expression "Federal laws" may, to my mind, mean anything or nothing. Until we know exactly what he means by saying that the dispute must not include Federal laws, I cannot agree to the proposition in that form. That is one remark which I have got to make.

The only other remark I wish to make is that I think paragraphs 54 and 55 lay down, if I may respectfully say so, a perfectly sound principle. There is, to my mind, a vital difference between a dispute arising between one State and another State, or between one Province and another Province, and a dispute arising between a private individual and a State. It is, to my mind, very hard to bring a man all the way to Delhi to try a suit on the original

side when the matter at stake may be only Rs. 500, or even only Rs. 20. If I may respectfully say so, I entirely endorse the remarks which have fallen to-day from Lord Reading; and therefore I say that, so far as paragraphs 54 and 55 are concerned, I would not amend them in any degree or in any respect, except to clear up the point raised by Sir Akbar Hydari.

*Sir Maneckjee Dadabhoy:* I should like to enlarge on the first point raised by Sir Tej Bahadur Sapru, and to know from Mr. Jinnah whether, if there was a dispute with regard to the interpretation of a Federal law, that would be within the jurisdiction or not.

*Mr. Jinnah:* It seems to me there is a great deal of confusion in the minds of the last two speakers, although I explained the point at great length in my speech. Federal laws would be the laws enacted by the Federal Legislature—any Statute. And further, I explained that, in regard to the Federal subjects with which we have already dealt, you have made certain subjects Federal subjects, such as company law, commercial law and banking law. You have got the railways—for policy and legislation railways are Federal. Take the Railway Act. Certainly, it is quite clear what I mean by Federal laws. Supposing, when any of those laws are put into operation, after your Federation has come into being—it may be between the State and a subject, it may be between two individuals—a dispute arises out of these laws. Who is to decide that? Not the Federal Court. It must be decided by the Local Courts. That is what I mean by Federal laws.

*Chairman:* Does that explain it, Sir Tej?

*Sir Tej Bahadur Sapru:* I am not satisfied with regard to that. **There is nothing new in this explanation, My Lord;** but I do not want to carry on the discussion. It will have to be reduced to a legal proposition.

*Chairman:* I follow the point on both sides. It is a nice point and we shall have to come to a decision when we draw up the Act.

Now paragraph 56. I think that is very formal. If you will turn now to page 4, that is the form of the appeal.

Paragraph 57—Rules of Court. I do not think you need trouble about that.

*Sir Tej Bahadur Sapru:* With regard to page 4, I should like to draw the attention of Sir Akbar Hydari to this, as he is very keen on the procedure which is suggested there.

*Chairman:* Yes. Sir Akbar, paragraph 57 is on the question of procedure. I think that is your suggestion, is it not?

*Pandit M. M. Malaviya:* In the last sentence in paragraph 57 it says:—

“The Committee are, however, impressed with the need for discouraging excessive litigation, and recommend there-



fore that no appeal should lie to the Federal Court, unless the constitutional point in issue has been clearly raised in the Court below."

That is restricting it too much, My Lord. The constitutional point in issue may not have been raised in the Court below; but if it is a good constitutional point, it should be open to the litigant to have it dealt with in the Federal Court.

*Chairman:* With regard to that, I quite appreciate your point. It is one which has agitated lawyers, I should think, for the last 150 years. The answer to it has generally been this: First, the question of expense—you ought not to be able to raise in an Upper Court points that you have not taken in the Lower Court. We have the same sort of rule in the Court of Appeal here, of which I was a member for a good long time. Another suggestion made is this, that very often, when you raise a point in the Court of Appeal for the first time, it may turn out that before the Court could adjudicate on that point, it would have to have certain facts found, and then the case has to be remitted. There are very good arguments both ways. Some people say it is six one way and half a dozen the other way; but I think on the whole, if you will permit me to say so, there is a slight balance in favour of this. I am not saying it is absolute justice. It is one of these points where you perhaps do not get absolute justice. May I just put it in this way? You will forgive me for arguing from England. Supposing a man here has a case in the County Court and has got a first-class point of law which we call a "sitter"—he ought to win. He does not take that point. Then he appeals to the Divisional Court of the King's Bench, and he does not take the point. Then he appeals to the Court of Appeal and does not take it. By that time the costs have gone up to an awful amount. Then he goes to the House of Lords and for the first time says: "Look here. I have got a point which is absolutely in my favour. I did not take it in the Court of first instance; I did not take in the first Court of Appeal or the second Court of Appeal." On the whole, the sort of view is that he ought not to be allowed to take it now. As a matter of abstract justice you are probably right, but the argument *ab convenienti* is against it. We will bear in mind what you say. On the whole, I think, if one were, so to speak, to go back to the Genesis or Exodus, or whatever you do go back to, one would assent to your view; but we have found on the whole, by balancing the pros and cons, that this is the better of the two systems, though I agree with you that as an abstract matter there is nothing to be said against your logical position.

*Mr. Zafrullah Khan:* Even if this procedure were not laid down here, I should think the ordinary procedure governing any Court would rule out any point which had not been raised below.

*Chairman:* Now, No. 58, please.

*Dr. Shafa'at Ahmad Khan* : May I draw your attention to the second paragraph :—

“ In the first place, they are clear that the right to refer matters to the Court for an advisory opinion must be vested exclusively in the Governor-General, acting no doubt in the normal case on his Ministers' advice.”

I suggest that this last phrase should be deleted—“ acting no doubt in the normal case on his Ministers' advice.” I think the hands of the Governor-General should not be tied by the advice of the Ministers. He may take the advice of other persons—the advice of representatives of the minorities and others. He will, of course, normally consult the Ministers; but he should not be bound down by the advice that the Ministers may give. He should be free to do what he thinks fit.

*Sir Samuel Hoare* : I am not quite clear. Supposing there was a minorities case, which I should think is probably the case you have in mind, would the Governor-General not normally take it to the Ministers?

*Chairman* : I think that is the reason why we put in the words “ normal ”.

*Sir Tej Bahadur Sapru* : That covers everything.

*Chairman* : You see, we are not legislating for the abnormal cases.

*Sir Samuel Hoare* : Can you not see the alternative, Dr. Shafa'at Ahmad? The Governor-General has got specific powers, or we assume that he has specific powers, in connection with minorities, and I think that would not be covered by the normal case. It would not be a normal case. A minorities case would be an abnormal case, so that in that case he would not have to take the advice of his Ministers. Is that your point?

*Chairman* : What we will do is, if we have not made it quite clear there, we will make it absolutely clear. We are in agreement with you. The only point between us is whether our words express what we want. Shall we cross it out altogether?

*Mr. Jinnah* : Yes.

*Sir Tej Bahadur Sapru* : My Lord, It must not be understood that, at any rate so far as I am concerned, I agree. It would be most unwise to do away with that word “ normal ”. I think the draft, as it stands, absolutely meets the point of view which has been urged by my friends on the other side, because the word “ normal ” implies that, in certain cases, you give a discretion to the Governor-General himself. But why should not the normal practice be followed?

*Mr. Iyengar* : Normally the Governor-General would consult his Ministers.

*Mr. Jinnah* : Would you refer to the Act of 1833 and see whether the King has got to act on the advice of his Ministers here? Of course not.

*Chairman*: Really the only point here is a drafting point. The question is how we ought to express our view. I must be wrong, because I see Sir Muhammad Shafi shakes his head. Anyway, we are agreed on this, as to what we want. The only point is whether this wording carries out what we all want.

*Sir Muhammad Shafi*: If I may venture to say so, it is not merely a drafting point. There is a great deal of substance in the point raised by my friend, Dr. Shafa'at Ahmad Khan. If I may venture to say so, you are not only defining but you are limiting the Governor-General's power if you interpose these words in the Statute; and it is undesirable, in view of the conditions obtaining in India, that the Governor-General's power in this respect should be limited. If I may venture to say so, it ought to be left to his discretion—the Governor-General's discretion—to take action in whatever cases he may think fit.

*Sir Provash Chunder Mitter*: Is it not left to his discretion as it is drafted?

*Sir Muhammad Shafi*: No; those words limit his discretion, limit his power.

*Sir Maneckjee Dadabhoy*: Normally he takes the advice of his Ministers.

*Sir Muhammad Shafi*: Oh, he will do that, even if there is no statutory provision of that kind embodied in the Act.

*Mr. Jayakar*: The words must be given their normal meaning. It is not "acting on his Ministers' advice." The words "in the normal case" have a distinct meaning, that this is the ordinary or normal procedure; but that does not bind the Governor-General in extraordinary cases or abnormal cases not to set aside the advice of his Ministers and act contrary to it. I submit, therefore, that the words "in the normal case" ought to remain there. It is the normal or ordinary procedure.

*Sir Maneckjee Dadabhoy*: And it will be for the Governor-General to decide whether it is normal or not normal. If the minorities have confidence in the Governor-General, then it ought not to affect them. If they have not got that confidence, then they will be affected in any event.

*Chairman*: Would you like to say "acting in abnormal cases on his own responsibility"? I think we appreciate what you mean. I agree it is not a drafting point. But we are all agreed that there must be cases where the Governor-General must take the responsibility himself. The only thing we want to do is to get this rather awkward phrase altered. Some people think it means what they want and other people think the opposite, but we can get it right. All we mean to say is that the Governor-General in some cases must act on his own responsibility and not on the responsibility of the Ministers. That is what it comes to. We will see that that is done.

*Sir Akbar Hydari*: Why not say "acting normally, though not necessarily"?

*Mr. Jinnah*: You know what my view is. It is that the Governor-General should not be given this power. However, that is a different question; but I do say that, if you are going to give him the power, then stick to the provisions of the Act itself which you are copying—the 1833 Act. If the King is at liberty to refer to the Privy Council any matter he may think proper, so the Governor-General should be at liberty to refer to the Federal Court any matter which he thinks it necessary to get an opinion upon.

*Chairman*: How about putting it "acting normally though not necessarily"?

*Mr. Jinnah*: I do not understand the object of it.

*Chairman*: The object of it is this—to get everybody into line. Then it means what we all want it to mean.

*Mr. Jinnah*: Then you can do what you like.

*Mr. Gavin Jones*: This is a very important matter for the minorities, and it would be far better if the words were deleted altogether.

*Mr. Zafrullah Khan*: The right to refer matters to the Court for an advisory opinion must be vested exclusively in the Governor-General. The rest is only a hope, and I do not think it is necessary to express that in the form of words.

*Sir Muhammad Shafi*: What we suggest is that these words should be deleted.

*Chairman*: Very well.

We will now pass to paragraph 59.

*Mr. Gandhi*: Would you add here that the Congress opinion is, or it is contended on behalf of the Congress, that the Federal Supreme Court should be the final Court of Appeal?

*Chairman*: "It was contended on behalf of the Congress that the Federal Supreme Court should be the final Court of Appeal."

*Sir Samuel Hoare*: I do not wish to be pedantic about it, but I should be a little sorry if we put that in. This is a Committee with members. If Mr. Gandhi likes to say that it is his opinion we can put it in that form.

*Mr. Gandhi*: I do not mind about that.

*Sir Samuel Hoare*: I do not go so far as to say that otherwise I have no objection, but I think it is a pity to put in something which does not emerge from this Committee.

*Chairman*: Shall we say "An opinion was expressed that"? We will put that in.

Are there any remarks on paragraph 60?

Does anyone wish to raise anything on paragraph 61?

*Sir Sultan Ahmed* : There is one point I wish to mention on the last sentence, which is as follows :—

“ With regard to the qualifications of the Federal Court Judges, the Committee suggest that any barrister or advocate of 15 years’ standing and any person who has been a Judge of a High Court or State Court for not less than three years should be eligible for appointment.”

Is it any State Court? There has been a case in which an Inspector-General of Police in a certain State has been made a High Court Judge.

*Chairman* : We mean the highest Court of the State.

*Dr. Shafa’at Ahmad Khan* : Of any State?

*Chairman* : That wants consideration.

*Sir Tej Bahadur Sapru* : What I was going to suggest was that, even in the case of a Judge appointed from a State Court, we must insist on his possessing the same qualifications that Judges of the other High Courts or members of the Bar possess. I have known cases where Inspectors-General of Police have been appointed Judges of the High Court in Indian States and I know of one case where an Accountant-General was appointed a Judge of the High Court in an Indian State. I do not want an Accountant-General or an Inspector-General of Police to preside over the Federal Court.

*Mr. Jayakar* : May I suggest that, instead of saying “ not less than three years ” we should say “ not less than five years ”?

*Chairman* : Yes, I think we can accept that. What we can say is “ or State Court, the qualifications being similar ”. I take it that is agreed.

*Pandit M. M. Malaviya* : I suggest we should say “ not less than ten years ”.

*Sir Provash Chunder Mitter* : Ten years would be impossible. Often they are not appointed until they are 55.

*Chairman* : You will accept five years instead of three?

*Mr. Jayakar* : I suggest five years.

*Pandit M. M. Malaviya* : In paragraph 61 it says :—

“ it would be a convenience if the salaries could be fixed by the Constitution Act.”

It is not usual to fix salaries in the constitution.

*Chairman* : We have got it in our Act that the Judges shall be paid £5,000 a year. I agree it is not usual. I think they have got it in the American Act, but I am not sure about that.

*Sir Tej Bahadur Sapru* : I would keep the Judges absolutely outside the vote of the Legislature.

*Sir Sultan Ahmed* : Certainly.

*Pandit M. M. Malaviya* : We cannot at present say what the scale of salaries will be under the new constitution of India for high offices generally, and to require that the salaries of the Judges should be fixed by the Constitution Act will be to pick out only one set of salaries from all the rest. Those salaries must have some relation to the other salaries which will be given to higher officials. That is the point.

*Mr. Joshi* : I agree with Pandit Malaviya that we should not have the salaries fixed by the constitution. The salaries of the Judges must bear some relation to the salaries paid to other officers. I think therefore we should omit this part of the Report.

*Sir Tej Bahadur Sapru* : My Lord, May I be permitted to point out that you have amply provided for a satisfactory solution of this difficulty in your Report, and I stand by it. The sentence which I am going to read is this:—

“The Committee are clear that the salaries at whatever figure they may be fixed, should be non-votable,”—

That is a perfectly sound principle, if I may say so —

“and incapable of reduction during a Judge’s term of office,”—

That again is a very sound proposition;

“and it would be a convenience if the salaries could be fixed by the Constitution Act, or in accordance with some machinery provided by that Act.”

What that machinery will be has yet to be worked out. Possibly it will have to be discussed by the Committee which you propose in the very next sentence. I am most anxious that we should not play with the salaries of the Judges, because the whole of the constitution will rest upon the independence of the Judges. If we are going to play with their salaries year in and year out then I cannot really feel satisfied that any constitution, howsoever good it may be, will succeed. I do not think we ought to be so democratic as to bring the Judges under the control of the political Legislature. I have a very strong feeling on that matter.

*Sir Muhammad Shafi* : I entirely agree with my friend, Sir Tej Bahadur Sapru.

*Mr. Joshi* : My Lord, I merely suggest we should omit this part—

“it would be a convenience if the salaries could be fixed by the Constitution Act.”

*Sir Tej Bahadur Sapru* : But then it goes on to say—

“or in accordance with some machinery provided by that Act.”

*Mr Joshi* : I am suggesting that we should preserve the words—

“in accordance with some machinery provided by that Act.”

*Sir Tej Bahadur Sapru*: That is covered by the first phrase which you want to take out.

*Mr. Joshi*: We should leave it free for the salaries to be fixed by that machinery.

*Sir Maneckjee Dadabhoy*: No; we do not want to leave it free; we do not want to leave it to the Legislature to settle it.

*Mr. Iyengar*: It says that they should be incapable of reduction during the Judge's term of Office; so that you are contemplating the right to change the salaries, but not during the term that a Judge is drawing the salary.

*Mr. Joshi*: If you once fix the salaries by Act of Parliament, I doubt whether you can reduce the salaries.

*Sir Sultan Ahmed*: In the next sentence it says:—

“ They suggest that the matter might be referred to a small committee for investigation and report at a reasonably early date.”

All that is clear.

*Mr. Zafrullah Khan*: It would be a convenience if it were fixed by the constitution.

*Mr. Joshi*: No; on the contrary it would be an inconvenience.

*Chairman*: I think we must here rather appeal to experience. The salaries of English Judges have been fixed by statute for nearly 100 years, and I assure you no harm has been done by it.

*Mr. Joshi*: Your Parliament is a supreme legislative body. The Indian Federal Legislature will not be a supreme legislative body; it will have to go to the British Parliament.

*Sir Sultan Ahmed*: No; in its own sphere it is a sovereign legislature. I think these salaries should be fixed.

*Sir Tej Bahadur Sapru*: The salaries should be fixed.

*Sir Muhammad Shafi*: Mr. Joshi forgets that the constitution is to be framed by the British Parliament, and it is this constitution which will embody the Legislative Assembly.

*Chairman*: Now paragraph 62.

*Dr. Ambedkar*: I did not think there was unanimity regarding the location of the Court at Delhi. I should have liked that this matter should be investigated by some committee.

*Mr. Jayakar*: I made the suggestion that it should be at a central place somewhere, not Delhi, but some place where the Court could work for the whole of the year, the climate being suitable for working during the whole year.

*Mr. Zafrullah Khan*: All sorts of suggestions were made from different quarters, but I do not think that any single place had as much support as Delhi.

*Chairman*: Now, please, paragraphs 63 and 64.

*Sir Tej Bahadur Sapru* : I am glad that the Report suggests that a Supreme Court, as a Court of Appeal from the British Indian High Courts, should be appointed; but I am rather disappointed with the recommendation that the Supreme Court for British India should not come into existence immediately, and that it should be left to the Legislature to decide the moment when that Supreme Court should come into existence. Let me assure Your Lordship that there is a very, very strong feeling in support of the creation of this Supreme Court almost immediately, and it seems to me that there is no reason whatsoever why we should not be able to bear the financial burden of bringing into existence a Court for which we have been putting forward our claim for many, many years past. It will mean, in my opinion, a great disappointment in British India, if you are going to put off the creation of this Supreme Court to a remote period; and I am very anxious that the Act of Constitution should first of all take up the question of the qualifications of the Judges of the Supreme Court, and at the same time bring into existence this judicial machinery for British India. I would not like to defer it to any future period and to allow inexperienced hands to interfere with a matter of this character. Frankly, therefore, I say that we ought to make up our minds as regards bringing into existence that Supreme Court simultaneously with the bringing into existence of this new constitution. Otherwise, British Indian opinion and legal opinion in India will never be satisfied with this recommendation.

*Sir Muhammad Shafi* : Lord Chancellor, I entirely endorse what has fallen from the lips of my friend, Sir Tej Bahadur Sapru. The immediate need for the establishment of a Supreme Court in India has been felt by those who are conversant with the position in India for a long time past, and we think that the time has now arrived when steps should be taken immediately towards the establishment of a Supreme Court in India; and, if the matter has to be left, in the manner in which these two paragraphs leave it, for subsequent decision, we do not know when that decision will be arrived at. It is very, very difficult to anticipate, for all sorts of difficulties may arise in the near future with regard to the setting up of the Federal machinery; and if the establishment of the Supreme Court is to be postponed until then, the crying need in India for the establishment of a Supreme Court will remain unsatisfied. I therefore strongly urge, as my friend has done, that these two paragraphs should be modified accordingly.

*Sir Provash Chunder Mitter* : May I put in a word. First, if the opinion be as strong (and I have no doubt that it is) as Sir Tej Bahadur Sapru and Sir Muhammad Shafi say, then where is the harm in trusting our Federal Legislature? Secondly, if you want to start the Supreme Court at once in your Act of Parliament, then certain investigations are necessary. Will you have your Supreme Court as a Criminal Court of Appeal? On that



important question, two eminent lawyers differ—Sir Tej Bahadur Sapru and Sir Muhammad Shafi.

*Sir Muhammad Shafi*: No, we do not differ.

*Sir Tej Bahadur Sapru*: Substantially there is no difference between us.

*Sir Provash Chunder Mitter*: About the Criminal Court of Appeal, on the question of substance as to the kind of appeal that should be allowed, there is a difference between Sir Tej and Sir Muhammad. Sir Muhammad would allow appeals on a much larger scale. This has a direct bearing on the number of Judges to be appointed. Then, on the third point, if it were limited only to civil cases, investigations would also be necessary. Therefore we either trust the future Legislature or we do not. If we trust our future Legislature, seeing that Muslim opinion, represented by Sir Muhammad Shafi, and Hindu opinion represented by Sir Tej Bahadur Sapru, are in agreement . . .

*Sir Tej Bahadur Sapru*: I do not represent Hindu opinion in this matter, nor does Sir Muhammad Shafi express Mauhammadan opinion. I am speaking from my experience as a lawyer.

*Sir Provash Chunder Mitter*: As I have already said, on the question of principle, I entirely agree; but if I have my doubts, it is because I am apprehending practical difficulties and do not want to ignore the realities of the transition period. Therefore, as drafted, it gives our national sentiment full play. I adhere to the draft as it stands.

*Mr. Zafrullah Khan*: May I say one word, with very great respect, on what Sir Tej Bahadur Sapru and Sir Muhammad Shafi have said. They say that there will be great disappointment unless steps are at once taken for the establishment of a Supreme Court. But this is exactly what the draft lays down. It says that the Committee should recommend that the Constitution Act should prescribe the jurisdiction and functions of the Supreme Court. You have got the whole draft before you. It also says that the Federal Legislature should be given power to adopt these provisions of the Constitution Act in the future if it should think fit to do so. The strongest argument that has been put forward in support of the establishment of a Supreme Court immediately is the very strong desire expressed, in addition to other ways, by resolution of the Indian Legislature. If the Indian Legislature is so strongly desirous of setting up a Supreme Court, there is full power left to it to do so. The very first thing it can do when it is constituted is to pass a Resolution, or to pass a Bill, adopting these provisions of the Constitution Act, and to put them in force immediately. All we are at present doing is this—that we shall not force a Supreme Court of this kind upon Federal India, or Central India—whatever one likes to call it—from the very beginning. It may be only six months after the Federal Legislature begins to function that they will have their Supreme Court, if the desire is so strong; but having regard to all the considerations

which are put forward in these paragraphs, I think it would not be a very wise step to give a decision here that a Court of that kind, with all those jurisdictions, civil and criminal, must necessarily be established the moment the Federation is established.

*Chairman*: I may be wrong, but I can quite see that there may be two different positions. You might say "Well, the British Parliament shall set up such a Court". The second position might be "Well, the Federal Parliament shall set up the Court". There may be some people who would like to see the first position. There may be some people who would like to see the second position. But is not this a sort of compromise? If everybody is very anxious that there should be such a Court, it is pretty clear, I should think, that the Federal Parliament will set it up; but it might be wise to do this sort of thing (I am only putting forward a suggestion)—that the British Parliament should say "Well, you shall, if you like to set it up, have the Supreme Court; but if you do set it up (a) its jurisdiction shall be so and so; (b) its Judges shall have this qualification; (c) anything else you like to put". The position would then be this, that if you really do all want a Supreme Court, all the Federal Parliament will have to do is to pass a Resolution that it shall be set up, in which event it will be set up with the jurisdiction and with the judicial qualifications and so forth that are prescribed in the Act of Parliament. Perhaps you will just think that over. It would prevent, so to speak, the Federal Parliament being given power to set up a Court just as it liked, with just whatever jurisdiction it liked and with just whatever qualifications it liked. If, however, they are very keen on having a Supreme Court, they can pass a resolution which will bring the Court into being on the lines which will be laid down by the British Parliament.

*Sir Muhammad Shafi*: May I, in that connection, invite your attention to one consideration? We are laying down that the all-India Federation shall come into existence when a certain percentage of the Indian States—we have suggested at least 50 per cent.—have agreed to come into the Federation. I presume that your Federal Legislature will come into existence after 50 per cent. of the Indian States have agreed to come into the Federation. That may take place in one year, or it may take place in ten years—we do not know when that consummation is to be achieved. Meanwhile, if I may say so, the experience of Sir Tej Bahadur Sapru and myself of the actual position in India—an experience which extends over 39 years—leads us to the conclusion that there is urgent need for the establishment of a Supreme Court in the country. If things are left in the way you suggest, Lord Chancellor, we do not know when the Supreme Court will come into being.

*Mr. Zafarullah Khan*: Do you want to have the Supreme Court before the Federal Court, Sir Muhammad?

*Sir Muhammad Shafi*: I want a Supreme Court for India to be established.

*Sir Tej Bahadur Sapru*: Not before, but simultaneously.

*Sir Muhammad Shafi*: Even before.

*Sir Provash Chunder Mitter*: I wish to say a word with regard to that last observation. If Federation does not come about, then I, as the sole representative of Bengal, object to any Supreme Court being set up; but if Federation does come, I welcome the idea of setting up a Supreme Court.

*Sir Maneckjee Dadabhoy*: I am entirely in agreement with Sir Provash Chunder Mitter, and I wish to assert most emphatically that, unless Federation comes into existence, we should not have a Supreme Court and the luxury of this expenditure. It is somewhat difficult to understand why our lawyer friends will not trust the Federal Legislature to establish a Supreme Court at the earliest opportunity.

*Mr. Gavin Jones*: The opinions you have had placed before you, Lord Chancellor, are legal opinions, and naturally the legal profession want a Supreme Court. Now, Sir, it will no doubt be the unanimous opinion of the legal profession that they do want a Supreme Court; but I am very doubtful whether it is the opinion of India. I certainly agree with the Report that the matter should be left to the Legislature. However, considering the way in which the legal profession is represented in the Legislature, I should like to have some further protection! I suggest that the Supreme Court should not come into being until after the constitution has been in operation for five or ten years.

*Sir Muhammad Shafi*: Lord Chancellor, In order to remove any misapprehension, will you permit me to add one word? I was speaking, not only as a lawyer with 39 years' experience, but as a landowner, having a substantial stake in the country and representing a class which, if I may venture to say so, is as worthy of consideration as any other class in India. So that my view should not be taken as the view merely of a lawyer, with the experience that I have had, but also as the view of one who represents a very important class of the country.

*Chairman*: I am very much obliged for this discussion. What I propose to do on this particular topic is this. It is evidently a very important thing, and you would like to have a Supreme Court at once, whatever happens. We will put the two different opinions here and leave it in that way. What will remain, therefore, is this, that it is the expressed opinion of a lot of you, that, no matter what happens, in your opinion a Supreme Court ought to be set up in the very near future. I will put it in that way. That finishes that point.

Now, will you come to paragraph 65, which deals with criminal practice.

*Sir Muhammad Shafi*: With regard to paragraph 65, I have one observation to make. In the earlier part of this paragraph you leave certain matters for the consideration of the Federal Legislature; but then you tack on to this recommendation a warning.

Now, I venture to submit that the portion of this paragraph embodying that warning should be omitted altogether. It seems to me that you are not only prejudicing the decision at which the Federal Legislature may arrive after weighing the pros and cons, but, if I may venture to say so, that you are indulging in a course of action which is to the highest degree undesirable. I would omit the warning altogether. Leave it to the Federal Legislature to come to a decision on these points; it will be for them to decide the point one way or the other.

*Sir Provash Chunder Mitter*: But as that opinion was expressed by some of us, I think there should be something.

*Sir Muhammad Shafi*: It is not your business to dictate to the Federal Legislature.

*Sir Provash Chunder Mitter*: It is my business to advise this Committee.

*Sir Muhammad Shafi*: You can give them advice when you are elected a member of the Federal Legislature.

*Sir Akbar Hydari*: I hold very strongly the opinion that this note of warning is very necessary. I feel that really there is not enough judicial talent for manning a Court or two or three Courts with the thirty or thirty-five Judges who will be required for constituting a Federal Court and a Supreme Court for British India. For that reason, I very strongly hold that the order should be what has been more or less sketched out in this Report. First we have the Federal Court, which will require about five Judges. With regard to five Judges, I am quite certain that we shall be able to produce men who will really command the confidence of everybody. But then, as soon as it comes to the creation of a Supreme Court for British India on its civil side and on its criminal side, there is the question of the large number of judicial officers required, and secondly, there is the question of financing that Court and the resources from which it will be financed, because that Court will be entirely for British India.

*Sir Tej Bahadur Sapru*: My Lord, I wish to say only one thing more. Howsoever good the constitution you may give us, I want to give this warning in the friendliest possible spirit—that British India will never look at your constitution if you do not give us a Supreme Court. I absolutely deny the statement of Sir Akbar Hydari that there is no judicial or legal talent in the country which can be brought to bear on this Court. As a member of the legal profession I say you can have at least thirty or forty first-class lawyers to sit on the Bench—lawyers who will know their constitutional law and general, civil and commercial law.

*Sir Muhammad Shafi*: And, as I understand it, the warning relates not to the Federal Court which you are going to establish, but with regard to the Supreme Court, with which my friend Sir Akbar Hydari has nothing to do.

*Sir Tej Bahadur Sapru*: I would beg the Committee to realise the importance of this and not to trifle with it and pass it over.

*Mr. Zafrullah Khan:* After the first sentence the rest should be deleted.

*Mr. Jayakar:* I thought the warning given in the draft related to the criminal jurisdiction; that is how I read the paragraph.

*Sir Muhammad Shafi:* And civil jurisdiction.

*Mr. Jayakar:* It says:—

“ But the Committee cannot refrain from a word of warning.”

I submit, having regard to the possibilities, that that warning was necessary.

*Sir Sultan Ahmed:* I do not think it is relating to criminal matters. Read the next sentence.

*Mr. Jayakar:* Paragraph 65 commences in this way:—

“ A proposal to invest the Supreme Court above described with jurisdiction to act as a Court of Criminal Appeal for the whole of British India also found a certain measure of support. It is clear that, even if a right of appeal to this Court in the graver criminal cases were given, the work of the Court, and therefore the number of Judges, would be enormously increased.”

That refers to criminal cases, of course.

“ The Committee had not the time at their disposal to enter into a close examination of the question whether, in principle, a Court of Criminal Appeal for the whole of British India is desirable, and they do not feel themselves able to express any opinion upon the matter, though they recognise its great importance.”

That again refers to criminal matters.

“ For the same reason that they have found themselves unable to recommend the immediate establishment, by the constitution itself, of a Supreme Court, for appeals in civil matters from the High Courts of British India, they are unable to recommend the immediate establishment of a Court of Criminal Appeal.”

That again refers to the Criminal Court.

“ This matter is one which, in their opinion, must be left to the future Federal Legislature to consider; and if that Legislature should be of opinion that such a Court is required, there will be no difficulty, if it should be thought desirable, in investing the Federal Court, or the separate Supreme Court, as the case may be, with the necessary additional jurisdiction.”

That, I submit, again refers to the jurisdiction of which the paragraph speaks.

“ But the Committee cannot refrain from a word of warning. It appears to them probable that a Court invested with

the various jurisdictions which were suggested in the course of the Committee's discussions would have to consist of probably as many as twenty or thirty Judges, and in all likelihood of many more. To create an entirely new Bench of this size would strain the judicial resources of any country, and it can scarcely be expected that the result would be satisfactory. The Committee are therefore strongly of opinion that one step only should be taken at a time and that experience should be gradually accumulated."

The one step means, according to my view of it, only the Federal Court, and we are not satisfied with that. What I wanted to say, Lord Chancellor, was this—that the view was very strongly expressed on this side also—and there were divided opinions in British India—that we should not make two experiments at the same time. We should have one experiment, and as our experience accumulated and confidence was gathered, then the other experiments should be tried. What you are doing, Sir, is only expressing that view. You have put it in the form of a warning. The word "warning" might be removed, if that is the objection; but surely we have a right to say that the view expressed by some of us should be mentioned in the Committee's Report. Of course, the word "warning" might be struck out.

*Chairman:* I think we might come to an end of this now. I think, perhaps, that the warning is rather heavily weighted. Cannot we put something like this? First of all, if you look at the top of page 10, you see—

"For the same reason that they have found themselves unable to recommend the immediate establishment, by the constitution itself, of a Supreme Court"—

that will have to be a little altered, because I am going to put the contending views on both sides. Then cannot we put in something like this. I myself do not think that it is right to say that there will not be found sufficient distinguished advocates in India to have a number of Judges. I think you will probably find that there are. In this country there are dozens. Cannot we put it something like this:—

"It appeared, however, to some members of the Committee that a Court, invested with the various jurisdictions which were suggested in the course of the Committee's discussions, would have to consist of probably as many as twenty or thirty Judges, and in all likelihood many more."

and leave it there. That would draw attention to the fact. Some people then could put it in both ways. My friends on my immediate left would say, "Well, we cannot have as many as that because of the expense." Other people would say there are not sufficient good men in India. If we left it in that sort of way, and just drew attention to the fact that a Court like that would necessitate a great number of Judges, I think that would meet the point.

*Mr. Jinnah:* May I just say a word? Is it not that we are attaching too much importance to this warning? After all, these are only words of wisdom that you want to incorporate, and which are very obvious and very commonplace. The Federal Legislature, when it is in full session and comes to consider the question of a Supreme Court or a Court of Criminal Appeal, will look at everything—not only everything that you are urging here, but a great deal more as well. Therefore, I do not wish to have the honour of participating in this warning, which contains no wisdom but very common platitudes. I would, therefore, suggest that it carries us nowhere, and that we should drop it.

*Chairman:* We will indicate, in accordance with what some people want, that some members of the Committee draw attention to the fact that it is probable that a Court, invested with the various jurisdictions which were suggested in the course of this discussion, would have to be composed of as many as 25 or 30 Judges, and in all likelihood many more, and leave it like that. We do not want to teach our grand-mothers to suck eggs! With that little indication, they will be able to say "We must take all the facts into consideration".

Now paragraph 66.

*Sir Provash Chunder Mitter:* I strongly urge that Service Judges should no longer be Judges of the High Court. I want it to be recorded that that opinion was expressed.

*Mr. Zafrullah Khan:* That is in the Services sub-Committee's Report.

*Sir Provash Chunder Mitter:* There is another thing to which I would like to draw your attention and that of my colleagues. You have suggested that the age limit of the Federal Court Judges should be 65. I say that it should be considered whether the age limit of High Court Judges should not also be 65. I suggest the same rule as regards age should apply to both.

*Mr. Jayakar:* There is one matter which seems to have been deliberately excluded, namely, the power of a single Judge to hear a second appeal. If that has been purposely excluded I have nothing more to say.

*Chairman:* I do not think it has been excluded, Mr. Jayakar.

*Mr. Jayakar:* You know what I mean. There was a very strong opinion expressed that the practice which has been growing up in most provincial High Courts is a bad practice. There was a unanimous opinion expressed about that on this side.

*Chairman:* I have made a note of that—that, quite apart from any Indian Federal Court, we should see into it.

(The Committee adjourned at 12-55 p.m.)

NOTE.—For an amendment of the Third Report of the Federal Structure Committee (paragraph 14), see also page 1035.

## THIRD REPORT OF FEDERAL STRUCTURE COMMITTEE.

## INTRODUCTORY.

1. The Committee's task at the Second Session of the Conference was to continue their discussions at the point at which they were left by their Report of the 13th January, 1931, and by the Prime Minister's Declaration of the 19th January, and to endeavour, so far as possible, to fill in the outlines of the Federal Constitution for Greater India which was sketched in those documents.

2. In approaching this task, the Committee have been assisted by colleagues who did not share in their earlier deliberations. In this connexion it will be remembered that, in virtue of an agreement recorded in March last, the Indian National Congress decided to participate in their labours.

3. Since January last, there has been much public discussion of the constitutional proposals which emerged from the last Session of the Conference. The Committee resumed their deliberations with the knowledge of this public discussion, and with the conviction that it is in a Federation of Provinces and States that the solution of the problem of India's constitutional future is to be found.

4. A further examination of the problem has confirmed them in the belief that by no other line of development can the ideal in view be fully realised. For this purpose it is essential that the "India" of the future should include, along with British India, that "Indian India" which, if Burma is excluded, embraces nearly half of the area and nearly one-fourth of the population of the country—an area and population, moreover, which are not self-contained and apart geographically or racially, but are part and parcel of the country's fabric; and its constitution must be drawn on lines which will provide a satisfactory solution for the problem of the existence, side by side, of future self-governing Provinces and of States with widely varying polities and different degrees of internal sovereignty, whose fortunes are, and must continue to be, closely interwoven.

5. The Committee rejoice to think that the Princes, while naturally determined to maintain their internal sovereignty, are prepared, and indeed anxious, to share with the British Indian Provinces in directing the common affairs of India.

6. It will be easy for the constitutional purist, citing federal systems in widely different countries, to point out alleged anomalies in the plans which the Committee have to propose to this great end; but the Committee, as they stated in their First Report, are not dismayed by this reflexion. Their proposals are the outcome of an anxious attempt to understand, to give full weight to, and to reconcile, different interests.



7. The Committee have taken into account:—

(a) The widespread desire in India for constitutional advance;

(b) the natural desire of the Indian States to conserve their integrity;

(c) the indisputable claims of minorities to fair treatment;

(d) the obligations and responsibilities of His Majesty's Government; and

(e) the necessity, paramount at all times, but above all at a transitional period like the present, when the economic foundations of the modern world seem weakened, of ensuring the financial credit and the stability of Government itself.

8. Without a spirit of compromise, such diverging interests cannot be reconciled; but compromise inevitably produces solutions which to some, if not to all, of the parties, may involve the sacrifice of principle.

9. It follows that, in many cases, many members of the Committee would have preferred some solution other than that which appears as their joint recommendation. But recognising that the basic aim of this Conference is, by the pooling of ideas and by the willingness to forego for the common good individual desires, to attain the greatest measure of agreement; above all, recognising that the time has come for definite conclusions, the Committee are prepared to endorse the conclusions set out in this Report.

#### THE STRUCTURE, SIZE, AND COMPOSITION OF THE FEDERAL LEGISLATURE.

10. The Committee expressed the view in their previous Reports that the legislative organ of the Indian Federation should consist of two Chambers, which will be empowered to deal with the whole range of the activities of the Federation, both those which affect British India only, and those which affect all federal territory. In the course of their discussions, preferences were expressed in some quarters for a unicameral Legislature, on considerations alike of simplicity, efficiency and economy; while some members urged that, having regard to the nature of the matters to be dealt with by the Federation, a single small Federal Chamber, which would adequately reflect the views of the governments of the constituent Units, would be the right solution of the problem.

11. At a later stage, again, the Committee were placed in possession of proposals which they have not been able fully to discuss, but which clearly demand further consideration, though the Committee fully realise that the adoption of either of these plans would involve material modification of the framework hitherto contemplated.

12. One of these plans would substitute for the Upper Chamber a small body consisting of nominated delegates of the governments

of the federating Units, which would have the right of initiating legislation and would be empowered to exercise a suspensory veto over the measures passed by the elected Chamber. This body would also have the right to express its opinion upon all measures of the Federal Government before they were laid before the elected Chamber. The authors of this plan also contemplate the possession by this body of certain advisory functions in the administrative sphere.

13. The second of these plans contemplates the confederation of the States into a single collective body for the purpose of federating with the British Indian Provinces. Its supporters would prefer a single Federal Chamber in which the representation of the Indian States collectively should be 50 per cent., the representatives being selected by an electoral college consisting of the federated States as a whole. In the event of a decision in favour of a bicameral Legislature, 50 per cent. of the seats in the Upper Chamber would be reserved for the States, their representation in the Lower Chamber being on population basis.

14. Upon the assumption, however, that the Legislature is to be bicameral, a variety of factors must be taken into account in determining the size of the Chambers. Cogent theoretical arguments can be adduced (and were in fact advanced by some Delegates) in support of the view that, for a country of the size and population of India, a Legislature consisting of from 600 to 700 members for the Lower Chamber, and from 400 to 500 for the Upper, could not be regarded as excessive in size, and that smaller numbers would fail to give adequate representation to the many interests which might reasonably claim a place in it. On the other hand, arguments no less forcible were adduced in favour of the view that Chambers exceeding 100 and 250 respectively might prove ineffective organs of business. We have given these divergent views the best consideration of which we are capable, and recommend as the result that the Chambers should consist, as near as may be, of 200 and 300 members respectively, in which the allotment of seats to the States should be in the proportion of 40 per cent. (or approximately 80 seats) in the Upper Chamber, and  $33\frac{1}{3}$  per cent. (or approximately 100 seats) in the Lower.

The Muslim delegation and some others are unable to subscribe to the whole of this paragraph, as they are opposed to the principle of giving weightage to the representation, in the Legislature, of the States in excess of their population proportion.

15. This latter recommendation is, of course, based on the assumption that the whole body of the States will eventually adhere to the Federation. The view was strongly expressed that, in the case of States not adhering at the outset, seats allotted to them as the result of the procedure contemplated in paragraph 26 should remain unfilled pending their adherence. But it was also urged that this might lead to a situation under which States adhering at the outset would find their total voting strength in the Legislature so small as to be inconsistent with their position as representing one

of the main constituent elements in the Federation. Some members of the Committee have stated it as their opinion that, in the event of the original adherents not forming a substantial proportion of "Indian India", some method should be devised by which their voting strength would be temporarily augmented pending the accession of other States. But the whole Committee hope that the contingency which might necessitate such an augmentation will not arise.

16. In any event, difficulty might arise in regard to States which are grouped for the purpose of deputing a representative; but it would be premature to attempt to suggest the best solution for such problems until the measure of adherence by "grouped" States can be fairly accurately ascertained or foreseen. The Committee accordingly content themselves with expressing the hope that the measure of adherence in each group will be sufficiently great to justify the filling of the seat allotted thereto by the nominations of the adhering States. Should the system of grouping be such as to admit of the allotment of two or more seats to one group, difficulties of this order would be more easy of solution.

17. The Committee recommend that the 200 members of the Upper House should be chosen in the main to represent the component Units—the Provinces of British India and the States—and that the representatives of the British Indian Provinces should be elected by the Provincial Legislatures by the single transferable vote. Candidature for the Federal Legislature should not, of course, be restricted to members of a Provincial Legislature, though such persons should be eligible if otherwise qualified. But no person should be a member of both a Provincial and the Federal Legislature.

18. In the case of those States which secure individual representation, their representatives will be nominated by the Governments of the States. In the case of those States, however, (and there will necessarily be many such), to which separate individual representation cannot be accorded, the privilege of nomination will have to be shared in some manner which it will be easier to determine when the various groups have been constituted—a process which will, of course, entail a detailed survey of local and regional circumstances.

19. For the Lower Chamber, the Committee consider that the selection of the British Indian representatives should be by election otherwise than through the agency either of the Provincial Legislature or of any existing local self-government bodies.\* Most members consider that election should be by territorial constituencies, consisting of qualified voters who will cast their votes directly for the candidate of their choice. Others have advocated some method whereby some of the obvious difficulties which must confront a candidate, in canvassing and maintaining contact with so large an area as the average constituency will involve, may be obviated.

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\* This expression is not intended to exclude such bodies as Village Boards or Village Panchayats.

20. The actual framing of the constituencies must necessarily depend largely upon the detailed arrangements to be made for the revision of the existing franchise—a task which is to be undertaken by a special Franchise Committee. The Committee therefore recommend that this body should be charged also with the duty of making proposals for the constituencies to return the British Indian members of the Lower Chamber of the Federal Legislature, and that it should explore fully the alternatives of direct and indirect election, indicated in the preceding paragraph, in the light of the practical conditions which will be presented by the size of constituencies, their populations and the proportion of this population to be enfranchised. The area and population of British India, excluding Burma, being, in round figures, 800,000 square miles and 255 millions respectively, and the seats in the Lower Chamber available for representatives of that area, on the Committee's proposals, being approximately 200, it follows that the average area of a constituency would be approximately 4,000 square miles, and the average population per seat some  $1\frac{1}{4}$  millions. And while, in many cases, the former of these figures would obviously be reduced by the natural grouping of the population in urban areas, the difficulties presented by electoral areas and populations of this size would, of course, be accentuated by the existence of separate communal electorates. It may well be that, while no difficulty will be experienced in providing for direct election in urban areas, some method of indirect election may prove desirable for rural areas.

21. As regards the appointment of the British Indian seats in both Chambers to the Provinces *inter se*, the Committee recognise that the population ratio, which they were disposed to recommend in **their previous Report as the guiding principle**, would not produce a satisfactory result unless it were tempered by other considerations. To take only one instance, it would immediately reduce the Bombay Presidency—a Province of great historical and commercial importance, which has for many years enjoyed approximately equal representation in the Central Legislature with the other two Presidencies and the United Provinces—to less than half the representation these latter will secure.

22. For the Upper Chamber, which will represent in the main the Units as such, the Committee think that the guiding principle should be a reasonable approximation to equality of representation for each Unit. Absolute equality, having regard to the great variations in size and population between the Provinces, would obviously be inequitable. The problem is a difficult and complicated one, involving the careful assessment of local factors, which is beyond the competence of this Committee. But the suggestion has been made that a possible solution might, for example, be to assign to each of the Provinces which exceeds 20 millions in population—namely, Bengal, Madras, Bombay, the United Provinces, the Punjab and Bihar and Orissa—an equal number of seats, say, 17; to the Central Provinces (if it included Berar) and Assam, say 7 and 5 seats respectively; to the North-West Frontier Province, 2

seats; and to Delhi, Ajmer, Coorg and British Baluchistan, 1 seat each.

23. In the Lower Chamber, representing as it will primarily the population of the federated area, we consider that the distribution should tally as closely as possible with the population ratio, but that some adjustment will be required in recognition of the commercial importance of the Bombay Presidency and of the general importance in the body politic of the Punjab, which it will be generally conceded is not strictly commensurate with its population as compared with that of other Provinces. We suggest that this adjustment might be secured in the case of Bombay, to some extent at all events, by adequate weightage of the special representation which we have recommended for Indian and European Commerce and, in the case of the Punjab, by some arbitrary addition to the 18 seats which it would secure on the basis of its population. Here again, the Committee are not in a position to make a definite recommendation, but they take note of a suggestion which has been made for the allotment to the Punjab and Bombay, and also to Bihar and Orissa, of 26 seats each; to Madras, Bengal and the United Provinces, of 32 seats each; to the Central Provinces, of 12; to Assam, of 7; to the North-West Frontier Province, of 3; and to the four minor Provinces, of 1 each—by this measure securing a distribution of the 200 seats which might be held to satisfy reasonable claims without doing undue violence to the population basis. But these figures, and those suggested in paragraph 22, would obviously require further consideration.

#### APPORTIONMENT BETWEEN THE STATES OF THEIR QUOTA.

24. The Committee recognise that this is primarily a matter for settlement among the Princes themselves; but the representatives of other interests can hardly regard it as a matter of indifference since, until a satisfactory solution is found, the idea of federation necessarily remains inchoate, and an important factor in determining the decision of individual States as to adherence to the Federation will be lacking. In view of the admitted difficulties of the question, the Committee are anxious to assist by friendly suggestions towards the consummation of an acceptable and generally accepted conclusion. The Committee are fully aware that the effective establishment of federation postulates the adherence of the major States and that the absence of even a few of the most important States, however many of the smallest might be included, would place the Federation under grave disadvantages. At the same time, they think that it is essential that the States as a whole should secure representation which will commend itself to public opinion as generally reasonable, and that it is hardly less important to satisfy, so far as may prove possible, the claims of the small States, than to provide adequate representation for those which cover large areas.

25. Two suggestions have been advanced, in the course of the Committee's discussions, for the solution of this problem. The first

was that the matter should be entrusted to the Chamber of Princes, with such arrangements as would secure an adequate voice in its deliberations to the small States, and to such States as are not represented in the Chamber at all. The second, based on the belief that the inherent difficulties of the problem would prove such that the Princes—acting through whatever agency—would be unable to evolve a plan which would meet with general acceptance and satisfy all claims, and consequently that a procedure based upon the first suggestion would merely involve infructuous delay, was that the task of apportionment should be remitted to an impartial Committee or tribunal on which the States themselves should not be given any representation but before which they would all be invited to urge their claims.

26. The Committee are not in a position, for reasons already stated, to make any definite recommendation as to the acceptance of either of these suggestions; but they consider that the best course would be to allow a period of time, which should not, they think, extend beyond the end of March, 1932, within which the Princes should be invited to arrive at a settlement, on the understanding that if within that period a settlement were not in fact secured, an impartial tribunal would be set up by His Majesty's Government to advise as to the determination of the matter.

#### METHOD OF SELECTION OF STATES' REPRESENTATIVES IN THE LOWER CHAMBER.

27. While the Committee remain of opinion that this question must be left to the decision of the States, it cannot be contended that it is one of no concern to the Federation as a whole. They note the assurances of certain individual members of the States Delegation that, in those States which possess representative institutions and for which these members were in a position to speak, arrangements will be made which will give these bodies a voice in the Ruler's selection. The Committee as a whole are prepared to leave this matter to the judgment of the States.

#### REPRESENTATION OF SPECIAL INTERESTS IN THE FEDERAL LEGISLATURE.

28. In paragraph 34 of their Second Report, the Committee recommended that special provision should be made in the Federal Legislature for the representation of the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce and Labour. We make no recommendation here relating to the first four of these interests, regarding the extent and method of their representation, nor for the representation of Women in the Legislature, since the decisions on these points are for the Minorities Committee.

29. But we affirm our previous recommendation that provision should be made for the special representation of the Landlord

interest, of Commerce (European and Indian) and of Labour. The number of seats to be assigned to each of these four interests and their apportionment amongst the various Provinces are questions which should be considered by the Franchise Committee, as also is the question of their method of election. Wherever possible, the method should be election rather than nomination.

#### NOMINATED MEMBERS.

30. In paragraph 34 of the Committee's Second Report, the suggestion was also made that the Governor-General should be empowered to nominate to each Chamber a specified number of persons, not exceeding perhaps ten, to represent the Crown. After further consideration, the Committee see no advantage to be gained from pursuing this suggestion. The persons appointed by the Governor-General to assist him in the administration of the Reserved portfolios will, of course, play their part in the business of the Legislature; but it is not apparent how their task would be facilitated by the presence of a small body of nominated members who, if they were non-officials, would rarely possess any special or effective knowledge of questions connected with the administration of the reserved Departments, and whose votes would be too few to influence decisions.

31. If, on the other hand, these members were officials chosen for their knowledge of the subjects in the Governor-General's charge, the same difficulty would be experienced as under the present régime of sparing from their departmental duties, for attendance in the Legislature, so considerable a number of officials as the suggestion contemplates. Moreover, the voting power which such officials would exercise would either be negligible or else would tend to maintain an "official bloc" which, in the opinion of the majority of the Committee, would be out of place in the conditions of the new constitution.

32. On the other hand, while the Committee, for the reasons given, are not prepared to advocate the nomination of members in either Chamber to represent the Crown or Crown interests, they are impressed with the desirability of securing to the Federation the services in the Upper Chamber of persons of the elder statesman type with an experience of public affairs, both in the political sphere and outside it. It may well be that person of this type, whom India would delight to honour, may be unwilling, through the absence of provincial influence or connexions, to solicit the suffrages of Provincial Legislatures, or to promote their candidatures by identifying themselves with particular political parties; and the small chances of success at the polls, when party feeling runs high, likely to be attained by persons possessing, in the English phrase, the "cross-bench" mind, need not be emphasised. Yet it would be a grave loss to India if such persons were excluded from her counsels. The Committee are, therefore, of opinion that a small proportion of seats should be reserved, in the Upper

Chamber only, for persons to be appointed by the Governor-General. The Governor-General would, in making these appointments, act as a general rule upon the advice of his Ministers, though we are disposed to think that, possibly by a constitutional convention, possibly by provision in the Constitution Act, two or three of the appointments might be made on the Governor-General's personal responsibility. In order to avoid any suggestion, however, of an official bloc, the Committee are of opinion that no serving official should be qualified to sit in the Upper Chamber as a nominated member.

#### QUALIFICATIONS AND DISQUALIFICATIONS FOR MEMBERSHIP.

33. For the Lower Chamber, in British India the qualification for membership should be identical with that for a voter; that is to say, any person who is qualified as an elector for a constituency of a particular class should be qualified also to stand for election by any constituency of that class in the Province.

34. But, for candidates for the Senate, certain additional qualifications should be laid down. Without attempting to prescribe these in detail—a task which would better be undertaken by the Franchise Committee—we consider that the existing rules regulating the qualifications of voters (and consequently of candidates) for the Council of State should be adopted as a model for candidates for the Upper Chamber, except that the minimum age limit should be 35 years, and subject to such modifications as may be necessary to prevent the virtual exclusion of Women, the Depressed Classes and Labour.

35. It will be necessary also to prescribe the qualifications of voters in the special constituencies we have recommended to secure the representation in the Upper Chamber of Landlords, Commerce (European and Indian) and Labour; and—subject to the age limit just suggested—a person qualified as a voter in any of the special constituencies should be qualified also as a candidate. Whether, in the case of all or any of these special constituencies, the present qualifications for voters for the Council of State could be adopted as they stand, appears doubtful; but this we would leave for the consideration of the Franchise Committee.

36. The existing disqualifications for membership for the Indian Legislature appear to us generally suitable for retention, though there was some difference of opinion as to those arising out of convictions for criminal offences, and suggestions were made—which we regard as impracticable—that a distinction should be drawn for this purpose between “political” and other offences, or between offences involving moral turpitude and those which do not. On the whole, we regard a restriction of this nature on the free choice of the elector as of little value as a means of ensuring probity of character in candidates, and we recommend that they should be abandoned. At the same time, some members of the Committee consider that the rules should be so framed as to disqualify from



candidature any person, who at the time of an election, is actually undergoing a sentence of imprisonment and who would consequently be unable, if returned, to fulfil his duties to the Legislature and to his constituents. On the other hand, a section of the Committee is opposed to this view, being of opinion that a sentence of imprisonment should not, in any circumstances, constitute a disqualification.

37. Although it will clearly be impossible to secure uniformity of qualification in British India and the States, we think it of great importance that there should be absolute uniformity in the matter of disqualifications. These should, therefore, be embodied in the constitution and should apply to all candidates alike.

#### OATH OF ALLEGIANCE.

38. The Committee consider that, following common practice in the Empire, the Indian Constitution should provide for an Oath of Allegiance to be taken by members of the Federal Legislature on assumption of their seats. They do not suggest a definite formula at this stage, but its terms will require careful consideration.

#### RELATIONS BETWEEN THE TWO CHAMBERS.

39. As will appear from paragraphs 26 and 35 of the Committee's Second Report, this important question was discussed for the first time in the Committee's present Session. The careful consideration we have now given to the matter has led us to the view that nothing should be done in the new constitution which would have the effect of placing either Chamber of the Federal Legislature in a position of legal subordination to the other. It would be a misconception of the aims which we have in view to regard either Chamber as a drag or impediment on the activities of the other. In our view, the two Chambers will be complementary to each other, each representing somewhat different, but, we hope, not antagonistic, aspects of the Federation as a whole. Absolute equality between the two Chambers of a bicameral Legislature is no doubt unattainable, and, if it were attainable, might well result in perpetual deadlock; and there is no less doubt that, the provisions of the constitution notwithstanding, the evolution of political development will inevitably result, in the course of time, in placing the centre of gravity in one Chamber.

40. But, so far as the letter of the constitution is concerned, we consider that, subject to the consideration shortly to be mentioned, there would be no justification for endowing one Chamber at the outset with legislative powers which are denied to the other. We accordingly recommend that, while the constitution should provide that, subject to the special provisions to be referred to later, no Bill should become law until it is assented to by both Chambers, it should contain no provisions which would disable either Chamber from initiating, amending or rejecting any Bill, whatever its character. This principle should, however, in the opinion of almost all the British Indian Delegates, be subject to the exception

that the right of initiating Money Bills should vest in the Lower Chamber alone, though the States Delegation were almost unanimously opposed to the drawing of this distinction. Subject, of course, to the decision on the point just mentioned, the principle of equality also appears to us to demand that the Government should be entitled to test the opinion of the other Chamber if one Chamber has seen fit to reject a Government Bill, and that, in the event of its passage by the Second Chamber it should be treated as a Bill initiated in that Chamber and taken again to the first.

41. In the event of rejection by one Chamber of a Bill which has been passed by the other, or of its acceptance by either in a form to which the other will not agree, we recommend that, subject to certain conditions which should be set out in the constitution, the Governor-General should have power, either after the lapse of a specified period or, in cases of urgency, at once, to secure the adjustment of the difference of opinion by summoning a Joint Session.

42. As regards the voting of Supply, the opinion of the British Indian Delegates was almost unanimously in favour of confining this function to the Lower Chamber. Their view was based on the precedent afforded in this respect, not merely by almost every other constitution, but by the actual powers which have been enjoyed by the Indian Legislative Assembly during the past ten years. The States Delegates, however, were almost unanimously of opinion that the principle of equality of powers should apply also to the voting of Supply. In their view, since the Supply required by the Federal Government will be required for the common purposes of the Federation (or for the common purposes of British India), there is no logical reason which could be adduced in favour of depriving the representatives of the Federal Units in the Senate of a voice in the appropriation of the revenues, the responsibility of raising which they would share equally with the members of the other Chamber.

43. Whatever may be the decision between these conflicting views, the Committee assume that the Demands for Grants, whether voted upon by both Chambers or only by the Lower Chamber, would be so arranged as to separate expenditure required for Federal purposes from that required for "Central" purposes, so that the latter might stand referred to a Standing Committee of the British Indian members of both Chambers.

#### NOTE.

*One member of the Committee raised the important question of empowering the Federal Legislature to deal with certain aspects of Labour questions and of empowering the Federal Government and Legislature to deal with questions connected with the ratification of International Labour Conventions.*

*A solution of the difficulties to which he has drawn attention will have to be found when the precise relationship between the legisla-*

*tive powers of the Federal and Provincial Legislatures is finally determined. In this particular matter there has not been opportunity this session to advance further than the general conclusions reached at the last Session, and the Committee are unable to report in detail upon it. Further consideration will have to be given to it.*

#### FEDERAL FINANCE.

44. The Committee did not find time during the first Session of the Conference to consider the subject of "Federal Finance", which may be summarily described as the question of the apportionment of financial resources and obligations between the Federation and the Units. On taking up this subject, the Committee found it desirable to remit it for examination by a sub-Committee, over which Lord Peel presided.

45. The Report of this sub-Committee, which was in effect unanimous, is appended to this Report. Little criticism was directed to its main features, and the Committee accept the principles contained in it as a suitable basis on which to draft this part of the constitution.

46. The Committee were, however, not satisfied with the proposals in Lord Peel's Report for a review of the problem by Expert Committees. Fear was widely expressed that these might, by recommending principles at variance with those upon which the Conference was agreed, tend to undo work already accomplished; and further, that the procedure suggested might cause unnecessary, and perhaps dangerous, delay in settling various points which had an important bearing on the character of the new Federation. The Committee accordingly consider that the suggested procedure should be revised in the manner described below.

47. No change need be made as regards the second of the two Committees (concerned with paragraphs 17—20 of Lord Peel's Report), except that it should have no connection with the other Committee. It should be noted that, of the matters within the purview of this "States" Committee, it is only in respect of those dealt with in paragraph 18 of Lord Peel's Report that it is essential to reach a settlement before the Act setting up the Federation comes into operation.

48. In place of the first Committee recommended in Lord Peel's Report, there should, as early as possible, be appointed in India a "fact-finding" committee, consisting of officials familiar with questions of finance, including States' finance. Without elaborating terms of reference, the functions of this committee may be sketched as follows:—

(a) To investigate the division of pension charges (paragraph 5 of Lord Peel's Report).

(b) To investigate the classification of pre-Federation debt, as contemplated at the end of paragraph 6 of Lord Peel's Report.

(c) To calculate the effect on the Provinces of various possible methods (of which there are only a few to be considered) of allocating the proceeds of Income-tax to the Provinces.

(d) To give an estimate of the probable financial position of the Federation in its early years under the scheme proposed in Lord Peel's Report, indicating, *inter alia*, the probable results of federalising Corporation tax, Commercial Stamps, Tobacco excise, or other possible national excises.

Of these, (d) is the most important.

It was pointed out that (b) had no reference to the investigation of any claim such as had been raised by the Congress, that liability for a portion of the Public Debt of India ought to be undertaken by the United Kingdom.

49. The facts and estimates required from the Committee described in the preceding paragraph should not take long to produce. There will remain to be decided, in the light of them, certain questions, as, for example—

(i) The exact detailed form of the list of Federal taxes (within the general frame-work laid down by Lord Peel's Report); in particular, a final decision will have to be taken about Corporation tax and specific Federal Excises.

(ii) The initial amount of the Contributions from the Provinces.

(iii) The precise period to be laid down for the extinction of the Provincial Contributions referred to in (ii), and of the contributions from certain States which are to be reviewed under the procedure mentioned in paragraph 47 above.

(iv) The exact method according to which Income-tax is to be returned to the Provinces.

50. There will also be one or two other points, left doubtful by Lord Peel's sub-Committee, which will fall for decision. It will be necessary to devise a procedure for discussion and settlement of the outstanding matters.

51. It may be that, in other fields, points of substance directly affecting federation will also remain for settlement after this Session of the Conference. It might thus prove convenient to use a common machinery for their disposal. It is accordingly agreed that this question of procedure should be postponed to a later stage.

#### THE FEDERAL COURT.

52. The necessity for the establishment of a Federal Court was common ground among all members of the Committee, and such differences of opinion as manifested themselves were concerned for the most part, with matters of detail rather than of principle. It was recognised by all that a Federal Court was required both to interpret the constitution and to safeguard it, to prevent encroach-

ment by one federal organ upon the sphere of another, and to guarantee the integrity of the compact between the various federating Units out of which the Federation itself has sprung.

53. The first question which the Committee considered was the nature of the Court's jurisdiction, and it was generally agreed that this jurisdiction must be both original and appellate.

54. The Court ought, in the opinion of the Committee, to have an exclusive original jurisdiction in the case of disputes arising between the Federation and a State or a Province, or between two States, two Provinces, or a State and a Province. The Committee are of opinion that disputes between Units of the Federation could not appropriately be brought before the High Court of any one of them, and that a jurisdiction of this kind ought rather to be entrusted to a tribunal which is an organ of the Federation as a whole. It would seem to follow that the Court should have seisin of justiciable disputes of every kind between the Federation and a Province or between two Provinces, and not only disputes of a strictly constitutional nature; but that in the case of disputes between the Federal Government and a State, between a State and a Province, or between two States, the dispute must necessarily be one arising in the federal sphere, that is to say, one in which a question of the interpretation of the constitution (using that expression in its broadest sense) is involved, since otherwise the jurisdiction would extend beyond the limits of the Treaties of cession which the States will have made with the Crown before entering the Federation. The Committee are disposed to think that decisions by the Court, given in the exercise of this original jurisdiction, should ordinarily be appealable to a Full Bench of the Court.

55. In the case of disputes arising between a private person and the Federation or one of the federal Units, the Committee see no reason why these should not come, in the first instance, before the appropriate Provincial or State Court, with an ultimate right of appeal, if the matter arises within the federal sphere, to the Federal Court, since it would obviously be oppressive to compel a private citizen who had a grievance, however small, against, say, his Provincial Government, to resort exclusively to Delhi, or wherever the seat of the Federal Court may be, for the purpose of obtaining justice. But even in the federal sphere the right of suit against a State in its own Courts accorded to a citizen of that State must be regulated by the laws of that State, though the citizen who is given a right of suit by the State law could not be deprived of his right of access to the Federal Court by way of appeal, whatever form that appeal may take. In this connection, the Committee draw attention to the need of investing both Provinces and States with a juristic personality, for the purpose of enabling them to become parties to litigation in their own right. The Committee understand that, at the present time, no action lies against a Province of British India as such, and that no action can be brought against an Indian Prince in a British Indian Court save under very special conditions. On the other hand, the Committee are

informed that, in some of the States, provision has already been made whereby proceedings can be taken against the State in its corporate capacity as distinguished from the Ruler of the State himself. This subject will require to be further examined.

56. The Federal Court ought also, in the practically unanimous opinion of the Committee, to have an exclusive appellate jurisdiction from every High Court, and from the final Court in every State, in all matters arising in the federal sphere, as defined above. A certain difference of opinion on questions of method has, however, to be recorded. The suggestion was made that some plan might be devised whereby anyone desiring to challenge the constitutional validity of a law passed by the Federal or a Provincial Legislature could obtain a legal decision on the matter at an early date after the passing of the Act, and that this might be done by means of a declaratory suit to which some public officer would, for obvious reasons, be a necessary party. The advantages of some such procedure are manifest, and the subject deserves further examination. Assuming, however, that legal proceedings of this kind are found possible, the Committee think it right that they should be confined to the Federal Court alone, at any rate where the validity of a Federal law is in issue, though there was a difference of opinion upon the question whether, in the case of a Provincial or State law, the proceedings might not be permitted in the first instance in the appropriate High Court or State Court. Where, however, a constitutional issue emerges in the course of any ordinary litigation, the tribunal which may have seisin of the case should have jurisdiction to decide it, subject always to an ultimate right of appeal from the State Court or High Court (if the case gets so far) to the Federal Court.

57. The form which the appeal should take might be left to be dealt with by Rules of Court, but, whatever form or forms are adopted, the Committee are clearly of opinion that there must be an ultimate appeal as of right to the Federal Court on any constitutional issue. Their attention was drawn to a very convenient procedure at present existing in British India whereby, when a question of title is raised in a Revenue Court, a Case can be stated on that point only for the opinion of the Civil Court proceedings in the Revenue Court being suspended until the decision of the Civil Court is given; and they think that the possibility of adopting a procedure of this kind might well be explored. They understand, in particular, that a procedure on these lines would be the procedure most acceptable to the States. The Committee are, however, impressed with the need for discouraging excessive litigation, and recommend therefore that no appeal should lie to the Federal Court, unless the constitutional point in issue has been clearly raised in the Court below.

58. The suggestion that the Federal Court should, for federal purposes, be invested with some kind of advisory jurisdiction, such as that conferred on the Privy Council by Section 4 of the Judicial Committee Act, 1833, met with general approval, and the Com-

mittee adopt the suggestion subject to certain conditions. In the first place, they are clear that the right to refer matters to the Court for an advisory opinion must be vested in the Governor-General; and secondly, they think that no question relating to a State ought to be referred without the consent of that State.

59. The Committee are of opinion that an appeal should not lie from the Federal Court to the Privy Council, except by leave of the Court itself, though the right of any person to petition the Crown for special leave to appeal and the right of the Crown to grant such leave would, of course, be preserved; some delegates were, however, of opinion that the Federal Court should be a final Court of Appeal. There would therefore be no right of appeal to the Privy Council direct from a High Court in any case where an appeal lay to the Federal Court. The Committee desire to emphasise here, in order to prevent any misunderstanding, that any right of appeal from the State Courts to the Federal Court and thence to the Privy Council in constitutional matters will be founded upon the consent of the Princes themselves, as expressed in the Treaties of cession into which they will enter with the Crown as a condition precedent to their entry into the Federation. There can be no question of any assumption by Parliament or by the Crown of a right to subject the States to an appellate jurisdiction otherwise than with their full consent and approval.

60. It will be necessary to provide that Federal, State and Provincial authorities shall accept judgments of the Court as binding upon themselves when they are parties to a dispute before it, and will also enforce the judgments of the Court within their respective territories. It will also be necessary to provide that every Provincial and State Court shall recognise as binding upon it all judgments of the Federal Court.

61. The Committee think that the Court should be created, and its composition and jurisdiction defined, by the Constitution Act itself. They are of opinion that it should consist of a Chief Justice and a fixed maximum number of Puisne Judges, who would be appointed by the Crown, would hold office during good behaviour, would retire at the age of 65, and would be removable before that age only on an Address passed by both Houses of the Legislature, and moved with the fiat of the Federal Advocate General. The question of the salaries and pensions of the Judges is a delicate one. The Committee are clear that the salaries, at whatever figure they may be fixed, should be non-votable and incapable of reduction during a Judge's term of office; and it would be a convenience if the salaries could be fixed by the Constitution Act, or in accordance with some machinery provided by that Act. The Committee have no desire to suggest any extravagant figure, but they are bound to face facts; and they realise that, in the absence of adequate salaries, it is in the highest degree unlikely that the Federation will ever secure the services of Judges of the standing and quality required. They suggest that the matter might be referred to a small committee

for investigation and report at a reasonably early date. With regard to the qualifications of the Federal Court Judges, the Committee suggest that the following should be eligible for appointment:—any barrister or advocate of fifteen years' standing and any person who has been, for not less than five years, a Judge of a High Court or of a State Court, the qualifications for appointment to which are similar to those for a High Court.

62. The seat of the Court should be at Delhi, but power should be given to the Chief Justice, with the consent of the Governor-General, to appoint other places for the sittings of the Court as occasion may require. The Court must also have power to make Rules of Court regulating its procedure; these Rules should, after approval by the Governor-General, have statutory force. The power to regulate the procedure of the Court should include a power to make Rules enabling the Court to sit in more than one Division, if necessary. The appointment of the staff of the Court should be vested in the Chief Justice, acting on the advice of the Public Service Commission; but the number and salaries of the staff must, of course, be subject to the prior approval of the Governor-General.

63. A strong opinion was expressed in the Committee that the time had come for the creation of a Supreme Court for British India to which an appeal should lie from all Provincial High Courts in substitution for a direct appeal to the Privy Council. Appeals from the Court would lie to the Privy Council only with the leave of the Court or by special leave. The creation of such a Court is in the natural course of evolution, and the Committee adopt the suggestion in principle. A difference of opinion, however, manifested itself on the method whereby such a Court should be brought into existence. There was a strong body of opinion amongst the British Indian Delegates to the effect that the Federal Court should be invested with this further jurisdiction, the proposal being that the Court should sit in two Divisions—one dealing with Federal matters and the other with appeals on all other matters from the Provincial High Courts. Other members of the Committee and, generally speaking, the States representatives, dissented from this view, and were of the opinion that there should be a separate Supreme Court for British India on the ground that the Federal Court would be an all-India Court, while the Supreme Court's jurisdiction would be confined to British India; the mass of work with which it would have to cope would obscure its true functions as a Federal Court, and to that extent detract from its position and dignity as a Federal organ. It is no doubt the case that many more appeals would be taken to a Supreme Court situate in India than are at present taken to the Privy Council, and the Committee appreciate the force of this objection. But there would be no difficulty in reducing the appeals to a reasonable number by imposing more stringent restrictions upon the right of appeal. The Committee would deprecate the imposition on the finances of India of the cost of two separate Courts if this can possibly be



avoided, and cannot disregard the possibility of conflicts between them. There is, lastly, at no time in any country a superfluity of the highest judicial talent, and the truer policy appears to them to be to concentrate rather than to dissipate judicial strength.

64. A question of very real difficulty upon which there is a divergence of view, remains to be considered, *viz.*, whether the Constitution Act itself should at once establish a Supreme Court or whether power should be given to the Federal Legislature to establish it either as a separate institution, or by conferring general appellate jurisdiction on the Federal Court as and when it may think proper so to do. The majority of the Committee is impressed with the need for proceeding cautiously in this matter, though recognising that the opportunity should not be lost of settling once and for all the general outline of a Supreme Court scheme. The establishment of a Supreme Court, and the definition of its appellate jurisdiction are, they think, essentially matters for the Constitution Act, and it appears to them that, in the circumstances, it may be advisable to take a middle course. They recommend, therefore, that the Constitution Act should prescribe the jurisdiction and functions of the Supreme Court, and that the Federal Legislature should be given the power to adopt these provisions of the Constitution Act in the future, if it should think fit to do so. The majority of the Committee recommends this method on several grounds. In the first place, the establishment of the Court would in any event require a large increase in the judiciary, and, in their view, it should be left to the Federal Legislature of the future to decide whether the additional expense should be incurred or not. Secondly, the whole subject is one which requires much expert examination, and it may be desirable that experience should first be gained in the working of the Federal Court in its more restricted jurisdiction. Thirdly, the functions of the Federal Court will be of such great importance, especially in the early days of the Federation, that, in the opinion of the majority, it would be unwise to run the risk of either overburdening it prematurely with work, or of weakening its position by setting up in another sphere a Court which might be regarded as a rival.

A substantial minority of the Committee is strongly of the opinion that the establishment of a Supreme Court for British India is a matter of urgent necessity, and that such a Court should be set up by the Constitution Act itself without necessarily waiting until the time when the Federation comes into being.

65. A proposal to invest the Supreme Court above described with jurisdiction to act as a Court of Criminal Appeal for the whole of British India also found a certain measure of support. It is clear that, even if a right of appeal to this Court only in the graver criminal cases were given, the work of the Court, and therefore the number of Judges would be enormously increased. The Committee had not the time at their disposal to enter into a close examination of the question whether, in principle, a Court of Criminal Appeal

for the whole of British India is desirable; and they do not feel themselves able to express any opinion upon the matter, though they recognise its great importance. For the same reason that they hesitate to recommend the immediate establishment by the constitution itself of a Supreme Court for appeals in civil matters from the High Courts of British India, the majority is unable to recommend the immediate establishment of a Court of Criminal Appeal. This matter is one which, in their opinion, must be left to the future Federal Legislature to consider; and if that Legislature should be of opinion that such a Court is required, there will be no difficulty, if it should be thought desirable, in investing the Federal Court, or the separate Supreme Court, as the case may be, with the necessary additional jurisdiction. Some members drew attention to the fact that a Court invested with the various jurisdictions which were suggested in the course of the Committee's discussions would have to consist of probably as many as twenty or thirty Judges, and in all likelihood of many more.

66. The subject of the Provincial High Courts in British India was also touched upon in the course of the Committee's discussions, and they think it right to record their views on one or two points of importance connected with this subject. In the first place, the Committee are of opinion that High Court Judges should continue to be appointed by the Crown. Secondly, they think that the existing law which requires certain proportions of each High Court **Bench to be barristers or members of the Indian Civil Service** should cease to have effect, though they would maintain the existing qualifications for appointment to the Bench; and they recommend that the office of Chief Justice should be thrown open to any Puisne Judge or any person qualified to be appointed a Puisne Judge. The practice of appointing temporary additional Judges ought, in the opinion of the Committee, to be discontinued.

Signed, on behalf of the Committee,

SANKEY.

*St. James's Palace, London.*

*9th November 1931.*

## APPENDIX.

**Report of the Federal Finance sub-Committee.**

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1. The terms of reference of the sub-Committee were as follows:—

"To examine and report upon the general principles upon which the financial resources and obligations of India should be apportioned between the Federation, the British Indian Units jointly and severally, and the States Units."

2. The following Delegates were selected to serve on the sub-Committee:—

Lord Peel (Chairman).

Major Elliot, M.P.,

Mr. Pethick-Lawrence, M.P.,

\*Major the Hon. Oliver Stanley, M.P.,

Sir Akbar Hydari,

Sir Mirza Ismail,

Colonel Haksar,

Rao Bahadur Krishnama Chari,

\*Mr. Benthall,

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\* Sir Robert Hamilton, M.P., subsequently took the place of Major Stanley, and Sir C. E. Wood that of Mr. Benthall.

Sir Maneckjee Dadabhoy,  
Mr. Iyengar,  
Sir Sayed Sultan Ahmed, and  
Dr. Shafa'at Ahmed Khan.

3. The sub-Committee met on the 28th, 29th and 30th September, and the 1st, 2nd, 6th, 7th, 8th and 9th October, and has authorised me to present this Report.

4. *Conditions of the Problem.*—In considering the principles upon which the general financial scheme for the new Federation should be framed, we are necessarily at a disadvantage because it is impossible for us, with the time at our disposal, to make even tentative estimates of the probable revenue and expenditure of the Federation and its constituent Units. Any theoretical scheme for the division of resources and obligations should, before being embodied in the constitution, be put to the test of a careful examination of its probable results by some body which is fully equipped for the task. We accordingly recommend that, with the least possible delay after the conclusion of the present Session of this Conference, an Expert Committee should be constituted for the purpose of working out in detail a financial scheme for the Federation,† taking as its starting-point the general proposals contained in our Report (subject, of course, to their acceptance by the Federal Structure Committee and the Conference). The Expert Committee must have for its guidance some general principles of the kind set out below; but it should be free to make alternative suggestions if, on closer examination of the facts, a probability is disclosed that any general principle laid down by us would, in practice, prove unworkable. In addition to the Committee's duty of framing a general scheme, there are also many specific points, some of which we mention below, on which its advice should be sought.

Such a body will necessarily be in a better position than we are to examine estimates of future revenue and expenditure and to take these into account in arriving at its recommendations. Even this Committee, however, will be unable to foresee the future so accurately that its judgment regarding immediate financial prospects can safely be made the basis of a rigid constitutional scheme. The difficulty is particularly acute in the adverse economic circumstances which now prevail, and which seem likely to continue for some time to come. It will therefore be necessary to aim at a considerable degree of elasticity in the financial framework. Whatever success in attaining this object can be achieved, we still consider it important that the Conference, when considering the question of constituent powers, should be specially careful to ensure that amendment of the constitution in this respect is not so hedged with difficulties as to be almost impracticable. Changing industrial and economic conditions, for example, may, at a date earlier than might now be anticipated, make it imperative to modify the financial scheme adopted at the outset.

While we are thus unable to frame a Budget for the Federation or its Units, it is impossible to enunciate even general principles without making an assumption, however rough, as to the financial obligations of the new governments. The provisional classification of subjects suggested by the Federal Structure Committee at the last Session of the Conference involves no change of importance, from a financial point of view, in the functions of the Provinces (or States) and of the government at the Centre (whether in its "Federal" or "Central" aspect). Federation may bring with it certain fresh charges (*e.g.*, expenses of the Federal Court), or possibly, on the other hand, certain administrative economies; but these variations do not appear likely to reach such magnitude as would bring about any fundamental change in the relative positions of the Units and the Centre in regard to financial requirements. Provincial expenditure, more parti-

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† See also paragraph 26.

cularly on "nation-building" services, may expand into fresh channels, whereas the range of Federal expenditure is more confined. It is essential however, that all the governments should exercise the strictest economy and that their scale of expenditure should be reviewed and reduced to a minimum. But although there may be a natural and a proper tendency for Provincial and States' expenditure to increase, despite economies, and for Federal expenditure perhaps to decrease, it is important to remember that the Federation will have to bear, in the main, the financial burden of any grave crisis, and that it is especially on the credit of the Federal Government that the whole financial stability of India—its constituent parts no less than the Federation—must, in the end, depend. We are therefore bound to point out that there is danger in assuming that in no circumstances will additional burdens fall on the Federal Government.

Bearing the above in mind, we have started from the standpoint—

(1) that it is undesirable to disturb the existing distribution of resources between the various governments in India unless, as we have found in some cases, there are imperative reasons for making a change;

(2) that, at all events to begin with, the Federation and its constituent Units are likely to require all their present resources (and, indeed, to need fresh sources of revenue); so that, on the whole, it is improbable that any considerable head of revenue could be surrendered initially by any of the governments without the acquisition of alternative resources.

With these preliminary observations we now proceed to set forth what we conceive are the principles to be followed.

5. *"Central" Charges.*—It was generally accepted in the Federal Structure sub-Committee at the last Session that the aim of the new constitution should be to eliminate, as far as possible, any "Central" subjects: but, so far as could be foreseen, it seemed likely that a residue of such subjects (notably certain civil and criminal legislation) would remain indefinitely. It appears probable, however, that the ideal will be more easily attained on the financial side "Central" expenditure, broadly speaking, will consist of three categories:—

(1) Expenditure on "Central" Departments.

(2) A share in pre-Federation obligations in respect of civil pensions.

(3) Possibly a share of the service of the pre-Federation debt.

(2) and (3) are, of course, items which will ultimately vanish.

Expenditure under (1) will be simply for those few departments and institutions (*e.g.*, Archaeological Department and Zoological Survey) which were not included at the last Session within the category of Federal subjects. It may well be that an agreement could be reached to federalise these items; but, in any case, the expenditure on them is relatively insignificant. In strict theory there should be included among "Central" charges a proportion of the cost of the Federal General Administration expenditure in respect of such "Central" business as "Central" legislation. The amount, however, would probably be so trifling as to make this a needless complication.

As regards (2), the allocation of "Central" civil pension charges (not debited to the Provinces) between Federal and "Central" is a point which should be investigated by the Expert Committee. There seems no reason why the Federation should not be charged in respect of the pensions of officers who were previously employed on duties which, in future, will fall within the scope of Federal activities; but there may be a case for making the balance a "Central" charge.

6. *Pre-Federation Debt.*—The third possible item in the "Central" charges—a share in the service of the pre-Federation debt—raises more

important issues than the other two. The Public Debt of India has been incurred through loans which have not, at the time of their issue, been allocated for expenditure on specific heads. It is certain that, in any case, from the point of view of the investor, the security must remain, as before, the "revenues of India"—that is to say, the future revenues of the Federation and of the Provinces but not of the individual States. No classification of pre-Federation debt as Federal and "Central" for constitutional purposes could be contemplated of such a kind as to affect the position of the lender.

The Departmental Memorandum of the Government of India has attempted to classify the greater part of the total Public Debt as debt covered by commercial or liquid assets together with a few miscellaneous items of a similar character, leaving a residue of Rs. 172 crores which, it is suggested, should be classed as "Central". We think that this classification may be misleading for the following reasons.

The borrowings of governments are in the nature of things, not restricted to what is required for investment in commercial or productive undertakings, and it is probable that no important country, even at the time of its fullest prosperity, has been in a position to show the whole of its debt as covered by assets of this nature. It would be absurd to suggest that every country has therefore been continuously insolvent, as would be the case of a commercial company which showed a deficiency of assets in comparison with liabilities. A country's borrowing is conducted on the security of its credit and of its revenues, actual and potential.

The Government of India, like most other governments, has at times had to increase its debt owing to revenue deficits. Such debt, legitimately incurred in tiding over periods of difficulty or emergency, forms a reasonable charge on the whole undertaking of government, even when not represented by specific tangible assets. On the other hand, large allocations have consistently been made from revenue for the reduction of debt and for capital expenditure. It is doubtful whether any other country could make so favourable a comparison as India between the total volume of its debt and the value of its productive assets.

Even as regards the productive assets included in the Memorandum, it will be observed that the figure against Railways, for instance, is not an estimate of their actual commercial value as a going concern, but represents merely the capital invested. The Railway proceeds in a normal year are sufficient for the payment of a contribution to general revenues of over Rs. 5 crores, in addition to meeting the whole of the interest charges on the Railway debt. The capitalised value of this additional profit, though it cannot be estimated with exactitude, might well amount to as much as Rs. 100 crores.

Again the valuable assets of the Government of India are not limited to those which actually earn profits. The Federal Authority will presumably succeed to the whole of the buildings and public works of all kinds which at present are the property of the Central Government. The replacement value of these is, of course, an enormous sum, though there are no exact data at hand for evaluating it. Further, while such assets do not directly produce revenue, they represent a saving of annual expenditure.

Moreover, although the loans and other obligations are shown as partially offset by certain assets, it will be understood that loans are normally raised for general purposes and not earmarked for specific objects; their proceeds go into a general pool. The particular items of debt cannot, therefore, be set off against individual assets; and it would clearly be impossible to relate the "balance" of Rs. 172 crores, mentioned above, to any particular loan or other obligation.

It therefore seems to us that, if it were found, after investigation by the Expert Committee, that all the obligations were covered by assets, the whole of the pre-Federation debt should be taken over by the Federation.

While, however, this seems to us to be the probable result of a close investigation, we do not rule out the possibility of a finding by that Committee that a certain proportion of the pre-Federation debt should equitably be classified in the first instance as "Central"; that is to say, that its service (including a due proportion of sinking fund charges) should be taken to be a "Central" and not a Federal charge.

The question of post-Federation debt is considered in paragraph 22 below.

*7. Service of "Central" Charges.*—The only important existing source of the Government of India's revenue which is derived solely from British India is Income-tax. The problem of how Income-tax should be treated is discussed more fully in paragraph 15 below; but it is clear that, whatever may be the amount of the "Central" charges discussed in the preceding paragraphs, it should be deducted as a first charge against the Income-tax collected solely from the British Indian Provinces, and against any other revenue collected by the Federal Government but derived solely from British India.

*8. Allocation of Resources between the Federation and its Constituent Units.*—It is obvious that, if there is to be an equitable apportionment of burdens and smooth working of the constitutional machine, the Federal resources should, as far as possible, be confined to revenues derived alike from the inhabitants of the Provinces and of the States, and which can be raised either without any action on the part of the individual States or by an agreement with them of simple character, readily enforceable. This principle implies, very roughly, that the Federal sources of revenue should be confined to "indirect" taxes. If, however, a "direct" tax could be found which complied with the above conditions, it would be highly desirable to include this among the Federal resources, for the following reasons.

The revenue from Customs will inevitably decline if there is an intensification of protective policy, and the profits of indigenous companies (and also, of course, the yield of the Income-tax on these profits) will presumably increase. Moreover, "indirect" taxes tend to impose a relatively heavy burden on the poorer classes, and a Federal system of purely "indirect" taxation might unduly expose the Federal Government to criticism on this ground. We have been informed that federations which began with only "indirect" taxation as a Federal resource have been compelled by force of circumstances to levy a tax on incomes or profits of companies in some form or other; and that, in at least two cases (United States of America and Switzerland), a formal Amendment of the Constitution was necessary for this purpose.

*9. Corporation Tax.*—The most obvious "direct" Federal tax is Income-tax. We think that it would be desirable, if it were possible, that some of the Income-tax receipts in all the Units of the Federation should, in case of necessity, be available as a Federal resource; but we recognise that this is, in general, a development which must be left to the future and depend on free negotiation between the Federal Government and the federating States subsequent to federation.

As regards the Corporation tax (now called the Super-tax on Companies), however, we suggest that, if the necessity of such a reinforcement of Federal revenues is established, this tax should be included in the list of Federal taxes; and we hope that the States will agree to this principle.

If federalisation of the Corporation tax were not accepted by the States, it would continue to be treated as a British Indian source of revenue.

*10. Classification of Revenues.*—In view of the difficulty of classifying taxes in general terms which permit of precise legal interpretation, and of the necessity, in a federation, of leaving no doubt as to where the constitutional power of imposing a certain tax lies, we think the most satisfactory solution would be that the Federal taxes and the Provincial taxes should be fully scheduled. We would suggest the following initial classi-

fication (apart from Income-tax, which is discussed separately in paragraph 15 below):—

*Federal.*

External Customs, including Export duties.

Salt.

Export Opium.

Excises on articles on which Customs duties are imposed (with the exception of Excises on Alcohol, Narcotics\* and Drugs).

Receipts from Federal Railways, Federal Posts and Telegraphs, and other Federal commercial undertaking (see further under paragraph 25 below).

Profits of Federal Currency.

Corporation tax (see paragraph 9 above).

Contributions from Provinces (see paragraph 16 below).

Contributions from States (see paragraph 17 below).

*Provincial.*

Land revenue.

Excises on Alcohol, Narcotics\* and Drugs.

Stamps, with the possible exception of Commercial Stamps (see paragraph 13 below).

Forests.

Provincial commercial undertakings.

Succession duties, if any.

Terminal taxes, if any (see paragraph 13 below).

The first seven taxes in the present First Schedule to the Scheduled Taxes Rules.

We think that these lists should be examined by the Expert Committee, not only in order to review them generally, but also to expand and particularise them, and to include in them all sources of taxation at present used in British India or under contemplation.

11. *Relations of Federal and State Taxation.*—It is necessary, at this stage, to refer to certain forms of taxation now in force in the States, apart from the special cases discussed in paragraph 20, which may conflict with taxes assigned to the Federation, or which may be economically undesirable from the point of view of the Federation as a whole. The first and most important of these is the internal Customs tariff which many States levy at their frontiers. One aim of the Federation, in our opinion, should be the gradual disappearance of any tax, now in force in a State, which is similar in character to a Federal tax and so may impinge on Federal receipts. At the same time we recognise that it may be impossible for the States in question to surrender, either immediately or in the near future, large sources of existing revenue, without the acquisition of fresh resources; nor would it seem to be in general an equitable plan for the Federation to attempt to buy up, so to speak, the existing rights of the States in such a matter. This would simply mean that, in the general interests of economic unity and to facilitate trade, a tax would be imposed on the Federation as a whole in order to relieve the inhabitants of the States. The abolition of these taxes must therefore be left to the discretion of the States, to be effected in course of time as alternative sources of revenue become available. Subject to examination by the Expert Committee, it seems likely that one possible such source is the Terminal tax referred to in paragraph 13.

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\* It is open to doubt whether "Narcotics" should, for this purpose, include Tobacco.



There may be some instances, *e.g.*, Corporation tax and Tobacco excise, in which States already levy taxes which, under the general scheme, it is suggested, might be federalised. Special adjustments will be necessary to bring these States into line with the Federation.

12. *Unspecified Taxes.*—Under the scheme outlined in paragraph 10 above, the problem of “residuary powers” of taxation, in its ordinary sense, would seem to disappear; and we are left simply with the question, who should have the power of raising taxes hitherto un contemplated in India. It is obvious that, in dealing with taxes of a nature which is at present unforeseen, the correct solution cannot be to allocate them in advance either finally to the Federation or finally to the constituent Units. A proper decision could only be taken when the nature of the tax was known. There would be great advantages in vesting the Federation with the right to levy such taxes, while empowering it to assign the right to the Units in particular cases, since such a process would be far easier than that of vesting the right in the Units and asking them, when necessary, to surrender it to the Federation. There are, however, constitutional objections to the proposal that the Federation should have power to impose unscheduled taxes on all Units of the Federation; and many of us feel that it is not possible to do more than to provide that the constitutional right to levy any unscheduled tax should rest with the Provinces or States, subject to the condition that the levy of the tax does not conflict with the Federal scheme of taxation.

13. *Taxation—Miscellaneous.*—Sir Walter Layton recommended the use of Terminal taxes as an additional resource for the Provinces. The Government of India, on the other hand, have pointed out the difficulties which beset this proposal. Once again, such complicated issues are raised that expert scrutiny is essential. We agree that, if such taxes were levied, the proceeds should go to the Provinces and the States. In any case we think that both the rates and the general conditions under which such taxes would be imposed should be subject to the control of the Federal Government and Legislature.

Transit duties, whether in the Provinces or in the federating States, should be specifically forbidden.

The Provinces should be debarred from levying internal Customs. (The position as regards the States is examined in paragraph 11 above.)

There is much to be said for federalising Commercial Stamps on the lines of various proposals made in the past; but we have not examined the question sufficiently to justify us in reaching a definite conclusion.

It will be understood that the powers of taxation enjoyed by Provincial Governments or States should be subject to the overriding consideration that they should not be exercised in such a manner as to conflict with the international obligations of the Federal Government under any Commercial Treaty or International Convention.

No form of taxation should, we think, be levied by any Unit of the Federation on the property of the Federal Government. The precise form in which this principle should be expressed should be examined by the Expert Committee.

14. *Grants to Constituent Units.*—It seems important that the constitution should, in one respect, be less rigid than the existing one, under which it has been authoritatively held that there is no power to devote Central resources to the Provinces or Provincial resources to the Centre. It should, we think, be open to the Federal Government, with the assent of the Federal Legislature, not only to make grants to Provinces or States for specified purposes, but also, in the event of its ultimately finding that Federal revenues yield an apparently permanent surplus, to be free, as a possible alternative to reduction of taxation, to allocate the surplus proceeds to the constituent Units of the Federation, both States and British Indian Provinces. It appears desirable that the constitution itself should

lay down the proportions in which funds thus available should be divided among the Units, whether according to their respective revenues, or to population, or to some other criterion—a point on which the Expert Committee will presumably advise.

Whatever the automatic basis for distribution, we consider that it should be subject to an exception in the case of States which impose taxes of a character similar to Federal taxes (*e.g.*, internal Customs); and it should be open to the Federal Government to distribute to such a State its share of the surplus funds only if that State agreed to reduce equivalently the tax at the abolition of which the Federation was aiming.

The reverse process should also be possible. Any Province, with the assent of its Legislature, should be free to make a grant for any purpose to the Federal Government.

15. *Taxes on Income*.—We now take up the question of the treatment of taxes on Income other than Corporation tax, which, we have suggested in paragraph 9 above, should be Federal. As stated in paragraph 7, something may have to be deducted from the proceeds of these taxes, in the first instance, on account of "Central" charges, if any.

We are agreed that such taxes should still be collected from the whole of British India by one centralised administrative service. Most of us are also of the opinion that uniformity of rate should be maintained, since variations of rate may lead to unfortunate economic consequences, such as discrimination between industries in different Provinces. Some of us take the opposite view, both because of the constitutional difficulty mentioned below and because of the difficulty of securing uniformity in all Units. The subject is clearly one to which the Expert Committee should devote much attention.

In any case, we are all of the opinion that the net proceeds should, subject to the special provisions mentioned below, be re-distributed to the Provinces. On any other basis it will be impossible to secure, even ultimately, a uniformity of Federal burdens as between the Provinces and the federating States, or to avoid a clash of conflicting interests in the Federal Legislature when there is a question of raising or lowering the level of taxation. The distribution of the proceeds of Income-tax among the Provinces (even though there may initially be countervailing Contributions to the Federal Government, as proposed in the next paragraph) may also form a very convenient means of alleviating the burden of two or three of the Provinces which, under the present system, are universally admitted to be poorer than the others. With this in view, the Expert Committee should recommend by what criteria the proceeds of Income-tax should be allocated among the Provinces—whether, for example, on the basis of collection or origin, or according to population, or by some other method or combination of methods.

Those of us who recommend that Income-tax should be collected by one agency at a uniform rate to be fixed by the Federal Legislature, though the proceeds are distributed to the Units, recognise that we are, of course, departing from the principle—to which we generally attach considerable importance—that the right to impose and administer a tax should be vested in the authority which receives the proceeds. This seems to us inevitable; but the difficulty might be met, at all events partially if the Federal Finance Minister, before introducing any proposal to vary the Income-tax rate, were required to consult Provincial Finance Ministers. The procedure in the Federal Legislature, when dealing with an Income-tax Bill, should follow the procedure to be laid down for other "Central" legislation affecting directly only British India.

A further point arising in connection with Income-tax, of such complicated nature that we are unable to make a definite recommendation regarding it, is the possibility of empowering individual Provinces, if they so desire, to raise, or appropriate the proceeds of, a tax on agricultural

incomes. We suggest that this point might be referred to the Expert Committee for investigation.

16. *Provincial Contributions*.—We have, subject to certain reservations, proposed the allocation to the Provinces of the proceeds of taxes on Income, without, so far, any corresponding reinforcement for the Federal Government. If the Expert Committee unexpectedly found that Federal resources were such as to give a secure prospect of recurring revenues sufficient to meet this loss immediately (and also a loss in respect of the heads dealt with in paragraph 17 below), many difficulties would, of course, be removed. But, on the provisional basis set out in paragraph 4, we are bound to assume that there may be a substantial Federal deficit, due to the allocation of Income-tax to the Provinces. The deficit, in so far as it arises from the above cause, should, we suggest, be met by Contributions from the Provinces, to be divided between them either on the basis of their respective revenues or of population, or according to some other defined method. The Expert Committee should consider what is the most appropriate basis. This basis need not necessarily be the same as that on which the Income-tax proceeds are distributed. Differentiation between the two methods might be used as a means of partially adjusting the burden on Provinces which are specially hard hit by the existing distribution of resources between them.

We further propose that, not merely should it be the declared object of the Federal Government, as its position improves, to reduce and ultimately extinguish these Contributions, but the constitution should specifically provide for their extinction by the Federal Government by annual stages over a definite period, say, ten or fifteen years.

17. *States' Contributions*.—In the scheme proposed above, the Federal burdens will be spread over all the Units of the Federation in a precisely similar manner except for:—

(a) The above-mentioned Contributions from the Provinces until such time as they are finally abolished;

(b) such direct or indirect contributions as are, or have been, made by certain States, of a kind which have no counterpart in British India; and

(c) varying measures of immunity in respect of Customs and Salt enjoyed by certain States.

We now turn to consider what the States' contributions are, or may be; but, at the outset, we would lay down the general principle that, subject to certain exceptions specified below, the direct or indirect contributions from the States referred to at (b) should be wiped out *pari passu* with the Provincial Contributions mentioned in the preceding paragraph.

18. *Cash Contributions from States and Ceded Territories*.—The direct or indirect contributions from the States just referred to may arise, or are alleged to arise, under the following heads:—

(i) cash contributions;

(ii) value of ceded territories;\* and

(iii) contributions in kind for Defence by the maintenance of State Forces.

(i) Cash contributions from States (till recently known as tributes) have arisen in many different ways, and it has been impossible for us to examine the cases of individual States. Nevertheless, we think that there is, generally speaking, no place for contributions of a feudal nature under the new Federal Constitution; and only the probability of a lack of Federal resources at the outset prevents our recommending their immediate abolition. We definitely propose that they should be wiped out *pari passu* with the Provincial Contributions discussed in paragraph 16 above. Meanwhile, there seem to us to be certain cases in which real hardship is inflicted by the relative

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\* This term does not include the leased territory of Berar.

magnitude of the burden of the cash contributions; and we suggest that it might be possible, without excessive loss being thrown on the Federal Government, to remit at once that part of any contribution which is in excess of 5 per cent. of the total revenues of a State. Apart from this, the circumstances under which the contributions have been levied vary so much that it is necessary for the Expert Committee to undertake (what it has been impossible for us to execute) a detailed examination of each individual case, and, with the above general principles in mind, to express an opinion as to what would be equitable treatment for each of the States in question.

(ii) Without the necessary statistics, we are unable to investigate in detail the claim of the States that, through having ceded territory, some of them will be liquidating a liability in respect of Federal burdens. Here again we propose that the Expert Committee should examine the whole question, and pronounce an opinion as to the equities in each individual case.

19. *State Forces*.—(iii) Any attempt to assess the financial value to the Federation of the State Forces would raise many intricate problems into which it has been impossible for us to enter. Close consultation with the Military Authorities and with individual States would be necessary before any solution of this problem could be found. The maintenance and availability of these Forces is at present optional for the States concerned; and we think it likely that, before any credit was given to a State on account of the Force which it maintains, the Federal Authorities would, at all events, wish to prescribe:—

(a) That the Forces should be efficient according to a standard of which the Military Authorities should be the judge, and should also be required for purposes connected with the general Defence scheme of India; and

(b) that these Forces should, by some permanent arrangement, be made available for services to be determined by the competent Military Authorities.

In any case, we regard this as a separate question which should be taken up between the Military and Financial Authorities of the Federal Government on the one hand, and the individual States on the other. We further think that any financial adjustment should be a matter of bargaining between the parties concerned, and should be treated as a separate matter—not on the lines of (a) and (b) of paragraph 17.

20. *Maritime States and Kashmir*.—These States, being on the frontiers of India, are in a special position as regards the question of external Customs duties. Here again, we feel that it is impossible to deprive States of revenue of which they are already in possession. One principle which we would lay down is that, in all cases, the Import tariff at the States' Ports should be not less than that at Ports in the rest of India. The question whether Maritime States should agree to the administration of Customs at their Ports being taken over by the Federal Department is obviously one of great importance, but hardly comes within the sphere of our enquiry.

Our general conception of the problem is that the Treaties or agreements, which vary widely in the different cases, must be taken as they stand, and that any decision as to what are the existing rights of a State, in those instances in which they are now in dispute, should be determined separately, with the least possible delay, and not by Expert Committee. We think, however, that the latter should investigate the position in each State on its ascertained existing rights, and should express an opinion as to what commutation it would be worth while for the Federal Government to offer to the State for the extinction of any special privilege which it now enjoys. In doing so, the Committee might allow for any contributions of special value which a State may be making to the Federal resources. With this opinion before them, we think it should be left to the Federal Authorities, if they think fit, to negotiate with each State for the surrender of

existing rights. The Expert Committee should also attempt to determine what, in the absence of any such surrender, would be the amount which Federal revenues lost owing to the existence of the special right of the State; and this valuation should be taken into account by the Federal Government whenever any question arose, as suggested in paragraph 14 above, of the Federation's distributing surplus revenue over the Federal Units.

21. *Emergency Powers of the Federal Government.*—In order to ensure that the Federation is not left resourceless, in a grave emergency, and also to secure the object referred to in the next paragraph, we regard it as important that there should be an emergency power in the Federal Government, with the approval of the Federal Legislature, to call for contributions from all the Units of the Federation on some principle of allocation to be based on examination by the Expert Committee.

22. *Borrowing Powers of the Units and the Security of Post-Federation Debt.*—In view of the degree of autonomy with which, we understand, it is likely that Provinces will be clothed, it seems to us that it will probably be inappropriate, at all events as regards internal borrowing, that there should be any power in the Federal Government to exercise complete control over borrowing by a Province. There must apparently be a constitutional right in a Province to raise loans in India upon the security of its own revenues, leaving it, if need be, to learn by experience that a Province with unsatisfactory finances will only be able to borrow, if at all, at extreme rates. We would, however, give the Federal Government a suitably restricted power of control over the time at which Provinces should issue their loans, so as to prevent any interference with other issues, whether Federal or Provincial. But, although this should be the constitutional position, we think it highly undesirable that, in practice, Provincial borrowings and Federal borrowings should be co-ordinated only to this limited extent; and we feel little doubt that, as hitherto, Provinces will find it desirable to obtain the greater part of their capital requirements through the Government at the Centre.

It has been suggested that loans, both for the Federation itself and for the Units, should be raised by a Federal Loans Board or Council, consisting of representatives of the Federal Government and of the Governments of the Units and of the Reserve Bank. On the other hand, it is argued that an authority of this kind could not raise a loan, since it could not pledge the revenues of the country, though it might be useful in an advisory capacity when the Federal Government was dealing with applications made by Provinces for loans. We are of opinion that these suggestions should be examined by the Expert Committee, which should be asked to make definite recommendations as to the machinery to be set up for arranging loans. In doing so, they will no doubt take into account the experience of Australia and other countries.

In order to secure that loans are raised at the cheapest rates, it is desirable that the security should be as wide as possible; and we therefore suggest that, in the interests both of the Federation and of the Units, all loans raised by the Federal Authority should, in the future, like those of the Government of India in the past, be secured not only on the revenues of the Federation but also on the revenues of the Provinces of British India. To ensure that this is not an unreality, it is necessary to have some such provision as is proposed in the preceding paragraph, under which there is an ultimate right in the Federation to call for contributions from the Units.

There would be no objection to federating Indian States, if they so desired, obtaining funds from the Federal Government on conditions similar to those applying to the Provinces, and being eligible for representation on the Advisory Board, provided that those participating were prepared specifically to recognise this right of the Federation to call for contributions from themselves as well as from other Units.

We are of the opinion that there should be no power in the Units to borrow externally without the consent of the Federal Government.

23. *Provincial Balances.*—We consider that, until a Reserve Bank has been established, the Federal Government should act as banker for the Provincial Governments on a commercial basis. On the establishment of a Reserve Bank, Provincial Balances should be kept with that institution.

24. *Chief Commissioners' Provinces.*—It is suggested that the revenue and expenditure of these areas, though shown in the accounts under separate heads for each area, should fall within the scope of the Federal Budget. Generally speaking, we think that the States have as great an interest in these areas as has British India; and we believe that those areas which are likely to be in deficit will probably be found to be so for Federal reasons, such as special connection with Defence, or, in the case of Delhi, its containing the Federal Capital.

It is, of course, proposed that the North-West Frontier Province, which is now a Chief Commissioner's Province, should become a Governor's Province. There must, however, be a considerable gap between the revenue derived from the ordinary Provincial sources and the normal expenditure of the Province; and it is proposed that this should be filled by a subvention. We contemplate that this subvention should be found from the Federal Budget, as the causes of the Provincial deficit are intimately linked with matters of Federal concern, *viz.*, Defence and Foreign Policy.

25. *Commercial Departments.*—Some of us are of the opinion that the Railways (and possibly other departments, such as Posts and Telegraphs) should be conducted on such a basis as to secure a more complete separation from Federal revenues than is at present the case, and that, after paying interest and meeting the charge at present incurred by the Government of India in respect of reduction of Railway debt, they should keep their own profits and should work on a basis which, in the long run, would yield neither profit nor loss. From our standpoint it is to be noticed that such a plan would involve an important change in the basis of the security for the existing debt; but the proposal is closely connected with that made at the last Session of the Conference, that a Statutory Railway Authority should be established. It thus raises very important constitutional issues which are beyond the province of this sub-Committee and must be fully examined elsewhere.

26. *Proposals regarding Expert Committees.*—The Expert Committee, the appointment of which we have recommended in paragraph 4 above, will, in our view, have a most important rôle to play. We anticipate that it might be difficult to commit to one small body the examination of all the matters in regard to which we have judged that detailed scrutiny will be required.

We therefore advocate a division of the field of enquiry into two parts. The principal object of the first enquiry would be a general survey of the problem and an examination of the questions dealt with in paragraphs 5 to 17 and 21 to 25 of our Report. The second enquiry should relate mainly to the States, and would require considerable historical research in addition to the compilation and scrutiny of statistics. Under this head it will be necessary to review in detail the questions dealt with in paragraph 17 to 20 of our Report.

We consider that efficiency and promptitude would best be served by allotting these two fields of enquiry to two separate Committees, the work of which might perhaps be co-ordinated by a common Chairman. A precedent for a somewhat similar device can be found in the arrangements made for the work of the Franchise Committee and Functions Committee of 1918-19.

Signed, on behalf of the sub-Committee.

PEEL.

*St. James's Palace, London,*

*9th October, 1931.*

PROCEEDINGS OF THE FORTY-SIXTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON MONDAY, THE 16TH NOVEMBER, 1931, AT 11 A.M.

*Discussion on Future Procedure.*

*Chairman:* Your Highnesses, and Ladies and Gentlemen, this meeting of the Federal Structure Committee has been summoned in accordance with what I understand was the wish expressed by some of the members of the Minorities Committee. You know—it is an open secret—that for many months a Committee has been sitting in this country which has been endeavouring, but only endeavouring, to produce materials upon which both a Provincial settlement for India should be based and a Federal settlement of the Indian question should be based. That was in pursuance of the Prime Minister's declaration in January last, which was in these terms—I apologise for reading them again, but they are so important that I desire that they should be placed on record at this meeting. The Prime Minister stated:—

“The view of His Majesty's Government is that responsibility for the government of India should be placed upon the Legislatures, Central and Provincial, with such provisions as may be necessary to guarantee during a period of transition the observance of certain obligations and to meet other special circumstances, and also with such guarantees as are required by minorities to protect their political liberties and rights.”

Every word of that declaration stands to-day. As far as I am concerned, that is the object for which I am working, for which I have worked, and for which I intend to continue to work.

During the last nine months we have gone into a very large number of questions. . . . You have expressed your views although you have not come to a final determination on all points, with regard to what the Legislature should be. You have expressed your views, although you have not come to a final determination on some points, as to Federal Finance, and you have expressed your views with regard to a Federal Court. You have come this great distance, you have expressed your views upon that, and for those of us who will have the task of putting your views or the eventual decisions taken by His Majesty's Government into a Bill of Parliament, those views will be of the greatest possible assistance.

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Now, there are certain subjects on which we have not had your views at all. We have not had your views upon what is to be done in relation to Defence and External Relations. They are both problems of the first magnitude and of the first importance. We have not had your views in this Committee upon Commercial Discrimination, and that again is a problem of great magnitude and of

the first importance. Finally, we have not had your views with regard to Finance.

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I propose first of all to take the question of Defence and External Relations. I then propose to take Commercial Discrimination, and I hope, after that, to deal, in your wisdom—I think you will be wise in so dealing with it—very briefly and very generally with the question of Finance. That will not take us very long, and after we have done that, bearing in mind what you have said, the Prime Minister, who has specially come to this meeting, will be able, with the benefit of your views, which he will have heard, to make the declaration which will wind up the Plenary Session.

That is how the matter stands. Let me say one final thing. Nobody need be committed to anything. All we want is an indication of view, and therefore the matter I am going to put before you now is this—that we should this morning have a discussion upon the Defence and External Relations. When that discussion is over, I should like to take the question of Commercial Discrimination, and when that finally is over I should like you to indicate your views very, very generally on Finance, so that the Prime Minister may have the opportunity of seeing and considering your views and when he has seen and considered them, to make the final statement to you at the Plenary Session.

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*Mr. Ramsay MacDonald:* As I said on Friday at the meeting of the Minorities Committee, the Government is very anxious that these subjects should be passed under review by this Committee as the other subjects have been passed. It is really not anything that the Government has done that seems to bring this Committee to an end. It is very much against the desire of the Government that that should be so. Our friends here have told us—and I think very reasonably—that it is impossible for them to stay for an indefinite period. But it does fill me with very disturbed feelings that the Conference should disperse without a survey of this question. I understand that there has been some reluctance on the part of the Committee as a united whole to discuss some of these matters, not on their own merits at all, but on account of certain things, like a communal settlement, being still unknown. I would like the members of this Committee not to allow that to keep them from discussing the full programme that the Government has put before the Committee. They can make their position perfectly clear, I think, that all they do now is with reserve; that until this other matter is settled they must take part in discussions with that reserve in their minds. I think that would safeguard them sufficiently, if I might presume to express that opinion, but it would enable the Conference to do its work before it goes. I want to make it perfectly clear that it is the Government's desire—their very strong desire—that your



opinion should be expressed on these subjects in just the same way as you have expressed your opinions on other subjects that have been discussed here. I need not say anything more, but repeat that we shall be very disappointed indeed if these subjects are not discussed.

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*Mr. Jinnah* : I have no hesitation in saying here that the Muhammadans are as ready as anyone round this table or anyone in India to further the constitutional advance of India, which we wish as strongly as anyone else. That is not the question that is troubling us. I am much obliged to the Prime Minister for putting the point he has put in the way in which he put it. My difficulty, and the difficulty of the four of us here who happen to be on this Committee, is this, that all through this Conference we have had collective responsibility on the part of our Delegation. I said from the start, of course, that we should bear in mind not only what the Prime Minister has said, and what you have said, and what is uppermost in the minds of many of our colleagues here. We do not wish to create any difficulties which we can possibly help, but I beg you to allow us to go back to our Delegation and consult them. I think we may—let us hope we may—then be able to meet you and help you in the discussion of the four subjects that you have already mentioned.

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*(The Committee adjourned at 11-35 a.m. and resumed at 2-15 p.m.).*

*Mr. Jinnah* : My Lord Chancellor, I am authorised on behalf of the Muslim Delegation to state that under the circumstances mentioned by you and explained to us we are willing that the discussion on the four matters that were mentioned by you may be proceeded with; but we wish to make it clear that we reserve to ourselves, and we think that it is an essential and vital condition, that until and unless the Muslim demands and the safeguards are incorporated in the constitution it will not be acceptable to us.

*Sir Muhammad Shafi* : Lord Chancellor, with your permission I desire to add a few words to what has just been said by my friend Mr. Jinnah. At the very first Plenary Session of this Conference on the 18th November last, speaking on behalf of the Muslim Delegation, I said :—

“ Now that we have met in order to try to find that solution, it is my business as spokesman to-day of my community, of the Muslim group, to tell you what we, the representatives of the Muslim community in this Conference, think. Our position is very simple; to repeat what I said in the Viceregal Lodge at Delhi in November, 1924, we want our countrymen in India to rise to that stature to which other people have risen in their own countries. We want

India to attain Dominion Status as an equal partner in the British Commonwealth of Nations."

And I added:—

"At the same time it is perfectly natural for the seventy-one millions of His Majesty's Mussulman subjects to insist upon this, that in the constitutional and administrative evolution of India they must have their legitimate share both in the Provincial and in the Central Government."

This was our position at the very commencement of this Conference; this is our position to-day; and, therefore, while we have no objection whatever to the discussion of the four subjects named by you, Sir, we still insist that, whatever the constitution which may ultimately be framed for India, Muslim interests, the interests of the eighty millions of His Majesty's subjects, must be safeguarded; those safeguards must be included in the constitution.

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*Chairman*: I should like to express my personal thanks to the two individuals who have just spoken, Mr. Jinnah and Sir Muhammad Shafi. It is a very great help to me personally in drawing up the future constitution to have your sanction to go on with these, and I desire to express to you my thanks. Forgive me for saying so quite bluntly; if I may, I would also like to say that I think you have shown a very great example to this Committee and the whole Conference in the very reasonable attitude you have adopted this afternoon. I am sure it is an attitude which not only ought to be followed, but will be followed, by everyone. You have both expressed that desire and I know it to be perfectly sincere because I have had the honour of conversations with you personally. Your desire is to do the best you can in the present difficulty: but you are entitled to protect your own interest and you would be foolish not to do so.

You have referred—I took down the words—to your legitimate claims, and so on. As far as I am concerned you are preaching to the converted. I am going to see, as far as one individual can, that everybody is properly protected and that the legitimate claims of everybody are placed upon record. As far as I am concerned, if you will allow me to say it again, no document will leave my hands until I am satisfied that not only you but all of you are properly protected.

Forgive me for saying it again, but I think you have shown a most conciliatory spirit. I hope it is a spirit which will be followed. It is an example to everybody else, because all of us have the same thing in view, the ultimate success and prosperity of India. Let me thank both you gentlemen for what you have said.

*Dr. Ambedkar*: Before the discussion begins, I should like to make the position of the Depressed Classes clear. I am only going to say a word, but what I want to say is that the position of the

Depressed Classes has been made clear all along; I do not think any member of this Committee is unaware of the fact that I have all along said that, although we are willing to consider the question of the establishment of responsible government for India, we will not consent to the establishment of such government unless the Depressed Classes of India, who number about sixty millions of people, are protected in a proper manner.

The protection which the Depressed Classes want we have laid down in the various memoranda we have circulated to the Conference, and I should like to make it clear, and I think there is far greater necessity for making it clear now, in view of certain developments regarding the minorities questions, that I for one, although I do not wish to raise any difficulty with regard to the discussion of the subjects which Your Lordship has placed before us, will not be a party to any constitution unless the claims of the Depressed Classes are satisfied and unless they are incorporated in the constitution. I am not prepared to take the promise or the word or the goodwill of any individual or set of individuals that the Depressed Classes will be protected hereafter.

The claims of the Depressed Classes is that they must have political safeguards, and those safeguards must be put into the constitution and form part of it. With that proviso—which, as I say, is a fundamental one—we are prepared to discuss these subjects.

*Sardar Ujjal Singh:* Lord Chancellor, I have not adopted the attitude of obstruction in this Committee, not because I am not keen about the protection of the interests of my community, but because I thought that we should go on with the work of this Committee uninterruptedly, in the hope that we should later on come to an agreement on this most difficult problem; and even if we could not come to any agreement, I thought the Government would have to decide this question, and the Government will take into consideration the just claims of every community.

In that spirit we have been discussing the problem of Provincial autonomy, and in that spirit, I believe, we discussed this very question of the responsibility at the Centre on the last occasion in this very Committee. Can anyone imagine that we can introduce and work Provincial autonomy without a proper solution of the communal question? As a matter of fact, I feel that when there is complete Provincial autonomy and law and order are transferred to a responsible Minister, the minorities in the Provinces take a tremendous risk, and their interests require all the more to be protected. But, as I say, I have been discussing these questions in the hope that we would come to some agreement, and that there will be some solution of this problem whereby the interests of my community will be fully protected. But I must point out that if the interests of the Sikh community are not fully protected they will not accept any constitution.

*Mr. Gavin Jones:* I have been asked to say that our community stands in the same position in this respect as the other minorities.

*Defence.*

*Sir Tej Bahadur Sapru:* Perhaps Your Lordship will allow me to begin my speech with an expression of our thanks, very genuine and sincere, to the Prime Minister, to Your Lordship, and to the other members of the British Delegation, who have helped us in a most material degree this morning in clearing the air.

May I also venture to convey across the table to Sir Muhammad Shafi and Mr. Jinnah our sense of appreciation of the way in which they have responded to the general desire that we should go on with the discussion of these vital questions, upon which hangs the future not merely of Hindu India, but of India as a whole, whose good we all have at heart.

If Your Lordship will permit me on this occasion, which I take to be the turning point in the history of this Conference, to make a confession of my political faith, I will say that I have a strong and unshaken belief that no constitution that you may devise or that we may devise has any chance of success in India unless the position of the minorities is completely and adequately safeguarded. With the desire of the minorities—and in that expression I would particularly include the Depressed Classes—to seek the protection of their interests, I have completely associated myself, and I see absolutely no reason why there should be on the part of men who hold my views and convictions any weakening in that respect.

Frankly, I think that we owe it to ourselves, if our nationalism is not merely a figure of speech, but a genuine deep-rooted sentiment, that we should tell the minorities and the Depressed Classes that our future is bound up with their future, that we cannot advance at all without carrying them with us, and it is in that spirit, that in spite of the many happenings during the last few weeks which have given rise to a sense of despondency, I should like to approach our future task.

We are grateful, My Lord, to Mr. Wedgwood Benn for reminding us this morning of the terms on which this Round Table Conference was called. The policy of His Majesty's Government was—and we have been repeatedly assured continues to be—that the method of approach to the solution of these big problems should be one of negotiation across this table, negotiation not only between one section of Indian opinion and another section of Indian opinion, but between all sections of Indian opinion on the one side and British opinion on the other side. If the task was one of imposing a constitution on India, not as we conceived it should be, but as you, the British Cabinet or British Parliament, conceived it should be, I think your task would be, from your point of view, infinitely easier; but the real difficulty arises when we have got to reconcile conflicting views, when we have got to find a way out of conflicting convictions equally strongly held on all sides; and I do hope that we shall not deviate in any degree or measure from the part which was prescribed for us last year, and which we all desire to pursue.

Since the commencement of this Session of the Round Table Conference we have been considering some momentous questions. Let us not overlook or underestimate the importance of the questions which we have already considered and with regard to which we have arrived more or less at some conclusions. As Your Lordship knows, we have discussed the question of the composition of the Federal Legislature, and I venture to submit—I hope I am not putting it too high—that a very considerable measure of agreement has been arrived at so far as the composition of the Legislature is concerned. It is perfectly true that there remain some loose ends to tie up, but I venture to think that the outstanding points with regard to the composition of the Legislature, the outstanding issues between the Indian States on the one side and British India on the other side, are not of such a character that we can honestly say that we do not foresee an amicable settlement in regard to those three or four questions. I therefore claim that so far as that part of the work is concerned it has been eminently successful. Similarly I can claim that we have arrived at a considerable measure of success in dealing with the questions of Federal Finance, the Federal Court and the Supreme Court of British India. Our work hitherto done would have remained incomplete if we had dispersed without discussing, without coming to an agreement upon, the vital question, the pivotal question I would say, of responsibility at the Centre, or without discussing those safeguards in which we are all interested.

Your Lordship will remember that last year, when we tried to sketch out the general outlines of the constitution, we attached considerable importance, in the course of our discussions to these three questions which you prescribed for us this morning. The question of the discriminatory legislation was one in which the Europeans were vitally interested. We arrived at a tentative conclusion in regard to that matter last year which more or less satisfied the parties concerned, and I see absolutely no reason why, if the task is approached to-day in the proper spirit, we should not arrive at final conclusions in regard to that matter this year which would satisfy all the parties concerned. The next question in which we were interested last year, and which continues to occupy the same important position, is the question of financial safeguards. I will not go into that question now; perhaps I shall have an opportunity of speaking on it when that question is taken up by Your Lordship; but I will address myself to the last question of great importance, and that is the question of self-defence, which is immediately the issue before us.

*Mr. Sastri*: “Self-defence”?

*Sir Tej Bahadur Sapru*: I mean the Army.

*Mr. Sastri*: National defence.

*Sir Tej Bahadur Sapru*: That is a legal expression—self-defence.

My Lord, so far as the question of the Army is concerned I would like to present it in this way. At the present moment the true constitutional position with regard to the Army, as it appears

to me, is that the Army is maintained by the Crown in India. Excepting for the fact that you find in the existing constitution provisions with regard to the appointment of the Commander-in-Chief, or rather with regard to his position in the Executive Council, and also provisions laying down that the Civil and Military Government of India rests in the Governor-General subject to the control of the Secretary of State, there are no special provisions to be found with regard to the Army in the Government of India Act. Therefore I venture to think that the true view to take is that the Army is maintained by the Crown in the exercise of its prerogative in India, but the money required for the upkeep of that Army is found by the Indian Legislature out of the general taxes. Now, so far as that is concerned I will invite your Lordship's attention to a very important section of the Government of India Act.

*Chairman*: Is Section 65 (2) the one with regard to the Army being in that position?

*Sir Tej Bahadur Sapru*: I am just going to refer to that, My Lord.

*Chairman*: Thank you.

*Sir Tej Bahadur Sapru*: The Section which deals with this matter is Section 67A, and I will invite your Lordship's attention to that. Section 67A (3) says:—

“The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either Chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs.”

Then if you go on in the same clause you will find that amongst the protected subjects is “defence.”

*Chairman*: Yes, that is (v) (c).

*Sir Tej Bahadur Sapru*: Yes, My Lord. Now further Your Lordship will be pleased to see that so far as the discussion of the subject relating to the Army is concerned, Clause (3) of Section 67A provides that that shall not be open to discussion also without the Governor-General's direction. I will read that again, My Lord:—

“nor shall they be open to discussion by either Chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs.”

*Chairman*: Will you help me with this, Sir Tej, merely as a matter of detail? Has there ever been an occasion when the Governor-General did direct?

*Sir Tej Bahadur Sapru*: I was just going to come to that, My Lord. The interpretation of this Section has given rise to a great deal of difficulty in the Legislative Department of the Government of India and also, I believe, at this end. In point of fact, so far

as I know—and I should like to refer the matter to Sir Muhammad Shafi, who succeeded me in that portfolio—I am not aware that any particular order was passed by the Governor-General at that time **throwing it open for discussion, any more than that the Governor-General ever prevented the discussion of it.** I refer the point also to Lord Reading. In actual practice the matter does come up for discussion in the Indian Legislature at the time when the supply is demanded.

*Lord Reading:* I can speak only for the time when I was there. There was always an order that discussions should be allowed.

*Mr. Iyengar:* Every year a notification is published that the Governor-General has permitted discussion of the subject.

*Lord Reading:* Every year.

*Sir Tej Bahadur Sapru:* I stand corrected. The position is, therefore, that without the permission of the Governor-General matters relating to the Army cannot even be discussed in the Legislature, and certainly, as the Statute itself shows, they are outside the vote of the Legislature.

Now, during the last ten years or so there are three landmarks which can be pointed out in regard to the Army in India. First of all, as I will remind Lord Reading, he appointed a Committee which was presided over by that very distinguished soldier, Lord Rawlinson, who was at that time the Commander-in-Chief, and on that Committee both my friend Sir Muhammad Shafi and I had the honour of serving as members.

*Sir Muhammad Shafi:* And Sir Denys Bray.

*Sir Tej Bahadur Sapru:* And probably there are some members of this Round Table Conference who appeared as witnesses before that Committee. That Committee submitted a Report which until last year at any rate never saw the light of day.

That Committee was followed by another Committee, a secret Committee of which the outside world knew nothing until last year. I am referring to the Committee presided over by General Shea. After that we had another Committee presided over by General Skeen, and that Committee submitted a Report which in Indian political parlance is now known as the Skeen Committee's Report. My friend, Mr. Jinnah, was a member of that Committee, and I believe there were one or two other members of this Round Table Conference who served on that Committee.

*Sir Muhammad Shafi:* And the Shea Committee Report was never placed before the Skeen Committee.

*Sir Tej Bahadur Sapru:* As Sir Muhammad Shafi says, that Report was never placed before the Skeen Committee, a fact which was elicited last year during the sitting of this Round Table Conference.

Now, while all this was going on, a scheme was evolved which is generally known as the Eight Units Scheme; that is to say, eight

units were reserved for the experiment of Indianisation so far as the officers attached to them were concerned. I freely confess that I did not believe in the merits of that Eight Units Scheme, even at the time when the Government of India were in correspondence with the Secretary of State about it; and, with all apologies to those who believe or who have believed in that scheme, I confess that ten years' experience does not enable me to alter my position or my view with regard to that scheme.

Now, as Your Lordship knows very well, right up to the year 1919, or 1920, there was not a single Indian officer who had the privilege and honour of holding a King's Commission in the Army.

It is true that during the last ten years a number of Indians have been taken into the higher ranks of the Army, men who have received education at Sandhurst or have otherwise qualified themselves for that position. Without pledging myself to accuracy, I believe the number of such men in the Indian Army does not exceed about seventy-one at the present moment.

We have, therefore, all along felt that unless and until some definite steps were taken, some definite policy of a continuous character adopted which aimed at a speedy Indianisation of the Army, it would be impossible for us to say that in the matter of defence we were as self-contained as are some of the Dominions in the British Commonwealth of Nations. The whole problem, therefore, is how best we can secure that end, how soon we can reach that stage.

I realise that the Army is a very delicate machinery, and I realise the danger of laying upon it inexperienced hands or trying experiments with it. No one is more conscious of the danger involved in so doing than I am. At the same time, it would be idle to pretend that there was not a feeling present in our minds that so far as the Indianisation of the Army is concerned, the process has neither been so continuous nor so speedy as we should have liked it to be.

Therefore, the immediate problem before us is, if we are going to get responsible Government at the Centre, what we are to do with the Army. Is it to come within the purview of the Federal Government or is it to remain outside its purview? Your Lordship will remember that last year in the course of discussions I ventured to point out that according to the scheme we were then considering, the Army and the External Relations would be federal subjects from the very start, though as a matter of agreement and arrangement during the period of transition they would be outside the control of popular legislation, and that observation of mine made last year was agreed to by Your Lordship.

Well, there are two possible views which can be taken with regard to the Army. One view which is put forward by what I may call the more advanced section of Indian politicians, is that the Indian Army would be a subject from the very start within the control and within the purview of the Indian Legislature, that



there should be an Indian Member of the Army, who should be from the commencement of the new constitution responsible to the Indian Legislature. The exponents of this view would perhaps be prepared to accept certain limitations on the power of the Legislature in relation to this Member.

The other view is that during the period of transition you may have an Indian Member—indeed, you must have an Indian Member—who shall acquire inside knowledge and experience of the Army administration, who shall cultivate a direct knowledge of the problems connected with the organisation of the Army, but who shall, under the Statute, continue responsible to the Crown—that is to say, to the Governor-General. This Army Member will be a member of the general Cabinet; he will take part in all the proceedings of the Cabinet, put forward his schemes before the Cabinet, invite discussion on those schemes on questions of policy affecting the Army, and similarly take part in the discussions relating to subjects outside his own jurisdiction, but so far as his ultimate responsibility is concerned, that will be to the Governor-General and not to the Indian Legislature. That was the view that I put forward last year. It was open to the objection that the position of the Army Member, such as I contemplated it to be, would be an anomalous one. The fact that it would be an anomalous one is, to my mind, not an effective answer to the argument that I advanced. Frankly, when you have got to provide for a period of transition—and it all depends on whether you want a period of transition or not—you must be prepared to put up with a certain amount of anomaly. You cannot have your constitution perfectly logical during the period of transition. These were the views that I formulated last year, and I do stand by those views now.

Coming to the other alternative, which I attributed to the more advanced school, I ventured to express my opinion, most humbly but very clearly, that you cannot make the Army Member partly responsible to the Governor-General and partly responsible to the Legislature. There is no such thing as divided responsibility in a matter of that character. In other words, if I may sum up the position, it really comes to this. I am suggesting a scheme of limited responsibility of the Governor-General. Those who differ from me suggest a limited responsibility of the Minister in charge of the Army. The question, therefore, is which of the two schemes shall be accepted and what are the contents of that scheme. I would put it in this way. I would have an Indian Army Member in charge of the Army portfolio.

So far as the technical side of the Army is concerned, so far as questions relating to discipline and drill and mobilisation are concerned, they will be matters within the jurisdiction of a Commander-in-Chief who shall be appointed by the Crown and who, for many years to come, is bound to be a British officer of high rank. Possibly in order to give your Army Member a fair chance you might associate with him an advisory council; but these are questions of detail, and I will leave them aside.

This Army Member will be responsible to the Governor-General, but he cannot be responsible to the Governor-General, and indeed he cannot discharge his responsibility to the Governor-General, unless and until we make some adequate provision for supply. And I do suggest that it should not be beyond the possibility of statesmanship to come to an arrangement with regard to that matter. My concrete suggestion, therefore, is that you must arrive at a basic figure which may be necessary for the expenditure of the Army for the next five, six or seven years. That basic figure may be arrived at by mutual discussion among members of a committee which you may appoint now, and when that has been arrived at, let that be the basis of a contract between the Governor-General and the future Government of India. Indeed, I see that it will probably be necessary for you to make some special provision to get over the difficulty of the first year of the new constitution, and I therefore suggest that before that new constitution comes into force power should be given to the Governor-General now to enter into that contract, and that the new Government should inherit that as a part of the constitution. Let that basic figure be revised from time to time by a committee consisting of members of the future Federal Government and the representatives of the Crown, and let there be a provision that the figures arrived at from time to time shall form the basis of contract.

Now, I do not think that even from a strictly constitutional point of view it could be said that such an arrangement would be inconsistent with the dignity or powers of a responsible Legislature, because it is open to a responsible Legislature to come to an arrangement by agreement with the Governor-General for the protection and safety of India.

*Chairman* : Would you kindly help me with regard to this? I am quite following, and with very great interest, what you are saying, and I have no doubt you are coming to this. I quite follow what you say with regard to this basic figure for the next five, six or seven years. But would you mind just dealing with one matter which I hope will not arise and might not arise? What about a sudden emergency?

*Sir Tej Bahadur Sapru* : I am going to deal with that presently, My Lord.

*Chairman* : Thank you.

*Sir Tej Bahadur Sapru* : This arrangement that I have just now put before Your Lordship and before my colleagues only relates to normal expenditure.

*Chairman* : Yes, that is right.

*Sir Tej Bahadur Sapru* : But we must be prepared to provide for unforeseen contingencies.

*Chairman* : Yes, for emergencies.

*Sir Tej Bahadur Sapru* : For emergencies. During this very period when this contractual system may be in force, clouds may

appear on the Indian frontier, trouble may arise for which no provision has been made in the Budget, and I do suggest that we must give special power to the Governor-General to meet these emergencies during the period of the transition. We ought not to hesitate in giving that power to the Governor-General because, fortunately for us, these emergencies do not arise on every day of our life in India.

*Chairman*: No.

*Sir Tej Bahadur Sapru*: Life otherwise would be intolerable. Now, it will be noticed that all this arrangement that I have suggested is strictly limited to the period of transition. How long that period of transition will be, what steps we shall take to curtail that period of transition, is a different question. Much will depend upon what steps we take to bring into existence the proper organisation or the proper educational institutions for the training of our officers in every branch of service.

*Chairman*: Would you forgive me for again interrupting you, so that I may get it in my mind? You are speaking of these clouds. Of course I quite understand what you mean; a cloud no bigger than a man's hand, as we know, may develop into a storm.

*Sir Tej Bahadur Sapru*: Yes.

*Chairman*: And then I quite agree with you that the Governor-General's powers on an emergency arise. I suppose it would be for him to judge when the emergency does arise?

*Sir Tej Bahadur Sapru*: Of course.

*Chairman*: Yes, thank you.

*Sir Tej Bahadur Sapru*: Under the system that I am contemplating, although constitutionally the power will rest with the Governor-General, yet I imagine that no Governor-General will entirely depend upon constitutional powers and ignore the advice of those who will be associated with him.

Well, My Lord, that is the provision that I would make for the financial security of the Army. There are, however, other equally vital questions connected with the Army, and some of those I propose to take up now.

*Mr. Joshi*: Does Sir Tej Bahadur Sapru think that no part at all of the Army Budget would be votable? Does he propose that the control of the Viceroy should be exercised by means of the power of certification of the grants, or that there should be no voting at all?

*Sir Tej Bahadur Sapru*: I will deal with that, if you will kindly bear with me.

I am coming now to some of the other points. As Your Lordship knows, the opinion is held very strongly in certain quarters—I do not justify that opinion any more than I attack it; I am only stating a fact—that the size of the Indian Army is such as to require careful consideration. In other words, it is held that the Indian Army, as

it is at present, is much too large for the needs of the country, and that there is room for its reduction.

Now, I express no opinion on that question one way or the other at the present moment, and I certainly do think that we shall be better able to deal with a question of this character when the new constitution has been established, when the new Army Member has been installed in his position, when he has received proper advice and has had access to information and knowledge which is denied to every one of us who are outside the charmed circle of the Government. I should give the Army Member of the future some time to evolve a policy of his own in regard to the size of the Army, then to discuss the matter with the Governor-General, then to cultivate the opinion of the Legislature in his own favour and to cultivate the opinion of the country, and then as a responsible Minister—that is to say, as a Minister responsible to the Crown—he should raise the question with His Majesty's Government here.

That is the plan that I would propose to follow. If I were to raise the question of the size of the Army at present, and if I were to put forward the argument that in my opinion one hundred and seventy thousand men are not necessary for the Indian Army, but that only one hundred and fifty thousand men are needed, and if I were asked why one hundred and fifty thousand and why not one hundred and forty thousand, frankly I should not be able to justify my position; I have not the necessary knowledge, the necessary facts, and the necessary information about those matters.

The position will be quite different, however, when the question is handled by a responsible Minister who has had access to all that information which is denied now to the outside world, and who will be prepared to come, with the position belonging to him, and say, "I am ready to take the responsibility for the Army, and I am ready to assure you that the Indian Legislature is prepared to take the responsibility for the Army." You cannot then ignore his advice and his demands in the same manner in which you may possibly ignore our advice in this matter now.

I would also like to dispose of another question connected with the size of the Indian Army, namely, that relating to the British troops in India. There has been a demand for some time past by Indian opinion that there should be a policy of progressive reduction of British troops in India on economic and financial grounds. That question was also considered, so far as I recollect, by the Rawlinson Committee. I would say that it is not enough for the Government of India to tell us that during the last ten or twelve years they have reduced the British troops by ten thousand or fifteen thousand. What I would say is that there must be a continuous policy, subject, no doubt, to over-riding considerations of general safety. The policy must be one of a continuous character. It must be steadily pursued, and it must not be varied from year to year, unless, of course, as I have said, over-riding considerations come in.

It is perfectly true that during the last two or three months the Finance Member of the Government of India has announced a reduction of military expenditure of four crores of rupees. Well, he would not be an expert, whether on the military or other side of life, who did not claim that in regard to matters within his specialised sphere he alone was right and everybody else was wrong. I do not, therefore, blame the military experts if they hold and strongly hold that the reduction of military expenditure has arrived at a point beyond which it would be dangerous to go. Personally speaking, I am not satisfied with regard to that. I certainly think that there is considerable room for reduction, and whether you like it or not, the size of the Army must be determined by the capacity of the people to pay. Indian finances are, at the present moment, in a bad condition. You have raised such heavy taxation during the last six months, not with the willing consent of the people, but in spite of their protests, that you dare not go on with this system for a very long time without giving Indian opinion an effective voice in the matter of taxation, and without effecting economies of a substantial character. By seeking to protect India with an Army of a size entailing such heavy expenditure, you may endanger the very object you have in view. Therefore, I do say that this question will have to be tackled very seriously, but I also say that for laymen like myself, and, if I may add, laymen like Mr. Gandhi and Pandit Malaviya who will presumably speak on this question, it would be extremely dangerous to express themselves dogmatically at the present moment. I have enough patience to let the question rest for a year or two, and be raised by a Minister responsible to the Crown, whose advice neither His Majesty's Government nor the very cautious India Office dare ignore. Therefore I do say that it must be distinctly understood that we want an Indian Member of the Army, who, though responsible to the Crown, will be competent to raise these questions with you whenever he may feel himself equal to doing so, after studying all such material as may be laid before him, and after receiving such expert advice as may be available.

There are just one or two matters of a less difficult character with which I will deal now, and then I will pass on to the question of Indianisation. One of the things that I should like to be laid down definitely beyond all dispute now is that the ranks of the Indian Army shall be open to all classes of people in India. My Lord, I will ask you to compare your policy of recruitment now with the policy of recruitment which obtained in India in the days of the East India Company. At that time there was no bar against anyone. This division of the population of India into martial and non-martial is an arbitrary division which has arisen owing to the political exigencies in the last fifty or sixty years, and I see no reason why any man of any caste or of any religion should be debarred from entering the Army provided he satisfies the necessary conditions required for an army career. I would place no ban on

members of the Depressed Classes; indeed, I ask you to open the ranks of the Army to the Depressed Classes.

Passing to the next point, what I will say is this—that at the present moment it is open to you to remove the Indian troops and also the British troops from India to any part of the British Empire without ever referring the matter to the Indian Legislature. All that the Statute requires is that if the Indian finances, the Indian revenues, are made responsible for expenditure incurred outside India, then the sanction of Parliament will be obtained, but there is nothing to prevent you from sending our troops to Mesopotamia, Palestine or any other part of the world where Empire exigencies require this to be done, and, indeed, this was done during the war, but of course that was a different situation; Imperial needs at that time were of a supreme character, and I am not drawing any analogies from that, but I do suggest that in future the law must be made absolutely clear that so far as the Indian section of the Indian Army is concerned, although the responsibility during the period of transition for the Army may remain with the Governor-General, the Indian Army shall not be sent outside India without the consent of the Indian Government or the Indian Legislature. I say nothing with regard to the British section of the Indian Army, because that stands on a separate footing altogether, that is ultimately responsible to the British Parliament here, and, indeed, the British Parliament cannot divest itself of its responsibility so far as the British section of the Army is concerned.

I shall then pass on to the last question connected with the Army with which I propose to deal, and that is with regard to military schools, colleges, and institutions. The sub-Committee of this Conference which was appointed last year went into this question and indicated its general policy in the Report associated with the name of Mr. Thomas. In accordance with that recommendation a Committee was appointed in India, I believe in March last, and that Committee has submitted a Report. Let me tell you frankly that Indian opinion is not satisfied with the Chetwode Report. We think that the rate of progress prescribed by that Report does not meet the requirements of the country, and we feel that it does not reflect the spirit of the recommendations of the Thomas Committee held last year here, and, therefore, I do say that the Statute must lay an obligation on the Governor-General which will be discharged through this Army Member that he shall maintain certain military institutions for the training for the higher ranks of the Army of Indian officers. Whether you will make the Budget so far as these institutions are concerned open to the vote of the Legislature or whether you will keep this part of the Budget also out of the purview of the Legislature is a question on which I admit there can be two opinions, and so far as I am concerned I will express no opinion until I have heard the opinion of my colleagues in regard to this matter.

Now, My Lord, I will just remind the Committee of the recommendations of the Committee appointed last year here. The three important recommendations were as follows:—

“ That immediate steps be taken to increase substantially the rate of Indianisation in the Indian Army to make it commensurate with the main object in view, having regard to all relevant considerations, such as the maintenance of the requisite standard of efficiency. (Mr. Jinnah dissented, and desired a clear indication of the pace of Indianisation.) ”

*Chairman* : This is page 62 of our Report.

*Sir Tej Bahadur Sapru* : Now, before I pass to the second recommendation, I personally hold that the pace of Indianisation may be slow in the beginning, but as time goes on it will increase very substantially. It will much depend upon the amount of interest that we take in developing our military institutions and upon the policy of Indianisation that will be evolved by the Indian Member of the Army and that may be supported by the Governor-General. I am quite aware that according to the Rawlinson Committee the period prescribed was, I believe, thirty years or twenty-eight years. Well, nearly nine years have since expired, and nothing has been done really of a substantial character so far as that recommendation was concerned. Speaking for myself, I should not like to commit myself to any period, twenty-five years or twenty-eight years or twenty years, because I know and I feel that, when once the proper organisation has been brought into existence, the rate of progress will be—whether we like it or not, whether the British people like it or not—much more quick than we imagine it to be. It is for that reason that I am not going to commit myself to any particular period. Of course, it would be wrong to infer that I suggest that the rate of progress may be fifty years or sixty years or seventy years. My answer to that is very simple; Indian sentiment will be the surest safeguard against such delay, intentional or unintentional. But I do not want to bind myself down to any period of twenty-five years or twenty-eight years at this particular moment.

Now, My Lord, the second recommendation of that Committee was:—

“ That in order to give effect to (a) a Training College in India be established at the earliest possible moment, in order to train candidates for commissions in all arms of the Indian defence services. This College would also train prospective officers of the Indian State Forces. Indian Cadets should, however, continue to be eligible for admission as at present to Sandhurst, Woolwich, and Cranwell.”

Now, My Lord, I support that. There is only one observation which I would venture to make with regard to this. Indian opinion with regard to the establishment of such a College and to the training of Indian officers is extremely sensitive.

We do not wish the matter to be left to the passing whims of successive Commanders-in-Chief. One Commander-in-Chief may be

a progressive may who believes that India can be made self-sufficient in the matter of defence, another Commander-in-Chief may be an extremely conservative and cautious man. I want the Indian Legislature, therefore, to have an effective voice in the matter of military training and the upkeep of these colleges and institutions for the training of Indian officers.

I pass now to the third matter, namely, that in order to avoid delay the Government of India be instructed to set up a committee of experts, both British and Indian, including representatives of the Indian States, to work out the details of the establishment of such a college. I have just said that such a committee has been appointed and has met and submitted a Report, and that Report has not satisfied any section of Indian opinion, as far as I know.

These, My Lord, were the recommendations with regard to the training of Officers. Further, that Report also referred to the fact that Indian opinion attached great importance to the reduction of the number of British troops in India to the lowest possible figure, and recommended that the question should form the subject of early expert investigation. I have already referred to this matter, but I wish to point out that the early expert investigation suggested in this paragraph has yet to come about.

At the present moment these are all the matters relating to the Army which I intended to take up, and I shall now pass to the next question, which relates to External Affairs.

*Mr. Joshi*: May I point out that I asked Sir Tej Bahadur Sapru a question?

*Sir Tej Bahadur Sapru*: I have already answered that. I say it is open to discussion whether the Budget relating to the military forces and so on should be open to vote or not. Beyond that I am not prepared to go.

*Chairman*: Sir Tej Bahadur Sapru has been of very great assistance to us, if he will allow me to say so, as he always is. Do you think we might relieve you, Sir Tej, by asking Pandit Madan Mohan Malaviya to go on with the subject of the Army, and then come back to External Affairs?

*Sir Tej Bahadur Sapru*: That will suit me better. What I would say, therefore, is that while on the one hand it may seem to some of my countrymen that my scheme is rather a cautious one, on the other hand I feel very strongly that, having regard to the delicacy of the Army machinery, and having regard to the fact that we cannot afford to play with that machinery, if my humble suggestions are taken into consideration I think we shall lay the surest foundations upon which we can build up the entire superstructure of the defence of India within, probably, a shorter period than some of us imagine.

*Dr. Ambedkar*: I should like to know what view Sir Tej Bahadur Sapru has regarding the relationship which should subsist between the Army Member and the Commander-in-Chief. Would



the Commander-in-Chief be merely the head of the department under the control and supervision of the Minister or Member or would you give him certain powers with which the Army Member would not have the right to interfere?

*Sir Tej Bahadur Sapru*: I am not prepared to go into details, but as I conceive the position of the Army Member he will deal with general questions of policy, financial and otherwise, but he will have no power to deal with technical or administrative matters relating to the Army and, if he is wise, even if he has such power he will not exercise it. I have no personal knowledge of the matter, but I appeal to my British colleagues here to say what exactly the position in England is with regard to the Army. The Secretary of State for War has probably no power to interfere with the internal discipline of the Army but deals with big questions of policy. I cannot forget one period of your Army history, the period of the Duke of Cambridge.

*Pandit M. M. Malaviya*: Lord Chancellor, I am sure we all feel very grateful to Sir Tej Bahadur Sapru for the very lucid and able manner in which he has opened the important subject of National Defence.

I agree with Sir Tej to a large extent in what he has said. But there are some vital points on which I disagree. I think we are all agreed that with the establishment of responsible self-government, the most important responsibility which devolves upon us Indians is for national defence. I do not think there can be two opinions on this subject. During the discussions held last year it was stated by the sub-Committee which was appointed to deal with this question that it must be recognised that the responsibility for the defence of India must hereafter rest upon the shoulders of Indians. If that is so, then I ask—and I am sure everyone will agree—that Indians be given a fair chance to discharge that responsibility. That responsibility demands that they should build up a national Army and maintain it in efficiency. That demands that they should offer all the assistance, financial and otherwise, which the Army as it exists may need. To enable them to discharge that responsibility and also to preserve peace and order in the country, and therefore to ensure progress, it is essential that they must have full control of the Army. Unless the full control of the Army is vested in the future Legislature, I submit that the responsibility of building up a responsible government in the country will not have been started under fair conditions from the beginning. If there is an idea that the National Government has no control over the Army, the situation will be regarded as anomalous. It cannot inspire the same confidence in the Government as would be inspired if it were known that the Government was a full Government, having all the responsibilities and powers which every civilized Government possesses. I submit, therefore, that on this vital question the Committee should make its mind quite clear that in order to help Indians to discharge the responsibility that is to rest upon them, it is essential that the

control of the Army should be passed on to them from the beginning.

If that is agreed, I should say that I agree with Sir Tej Bahadur Sapru that one of the important things to do is to appoint an Indian as the Army Member. The appointment of an Indian Member of the Army was advocated by me before the Rawlinson Committee in 1921, and I am glad that it has found such strong support from Sir Tej Bahadur Sapru and other members who spoke last year. But while I am agreed as to the necessity of the appointment of an Indian Army Member as the first step to enable Indians to organise national defence, I do not agree with Sir Tej Bahadur that this Member should be responsible to the Governor-General. I submit that he should be responsible to the Legislature as other Ministers in a National Government will be. But it may be said that there is a difficulty in the way, and that that difficulty arises from the presence of British troops in India. The Committee is aware that the Army in India consists of two parts. One is the Indian Army proper, which consisted in 1928 of 158,143 Indian soldiers and 4,833 Indian officers with the Viceroy's commission, 6,998 officers with the King's commission, and British soldiers to the number of 61,537. I think it will be generally agreed without much difficulty that the Indian Member should have charge of the Indian Army, the Army which consists of Indian soldiers and which is officered largely by British officers and partly by Indians; but there is a difficulty felt, I understand from conversations which I have had with some of our British friends here, regarding the transfer of the control of British troops to the Indian Member. It is said that British troops will not take their orders from an Indian Member. I have been very sorry to hear this. I thought that our British fellow-subjects desired that India should remain within the British Commonwealth of Nations and that they had recognised that it was essential for that purpose that we should be put on a footing of equality with them in all matters, that we should be equal partners, and if we are equal partners and equal fellow-subjects then I submit it must follow that whether an Indian happens to be the officer who gives the word of command or whether a Britisher happens to be the officer who gives the word of command, the command must be obeyed by everyone as a matter of duty; but if this is not acceptable to our friends of the British Delegation, then I submit that a very great difficulty will arise in building up the national Army for national defence. In this connection I would also say that the question should be looked at in the light of the fact that the presence of British troops is not desired by British statesmen to be a permanent feature of the new organisation in India, that everybody agrees that the British troops are to stay there for a limited period only. If that is so, there is greater reason why it would not be insisted upon that the British troops should not ordinarily be under the control of the Indian Member.

I wish to make it clear that when I speak of the control of the Army by an Indian Member I mean the same kind of control as is

exercised by such a Member under every civilised government. I do not imagine that there should be any interference with drill, discipline, field operations or the equipment of the Army, and so on; all those matters of a technical character will be within the special province of the Commander-in-Chief, advised, as Sir Tej Sapru has suggested, by an advisory council, which I think would be a very desirable thing. But all matters of a non-technical character should be within the jurisdiction of the Army Member. He should also have the power to require the Commander-in-Chief, or the Officer Commanding to move the troops from one part of the country to another wherever there may be a necessity for it. There may be a difficulty in the minds of some of our friends that the Indian Member may not some time send out the troops where they may be needed. To meet such an emergency in a case of that character, I am willing that we should provide in the constitution that on a proved danger from outside or a proved breakdown of the machinery of government the Governor-General may, if he thinks it necessary for preventing external aggression or internal commotion, suspend the constitution to the extent necessary, and himself take charge of the Army. A provision like that will enable any emergency to be met, and with that provision I do not see why there should be any objection taken to the exercise by an Indian Army Member of the powers which such Members exercise in this country and in other countries.

*Chairman:* Will you kindly help me there? I have taken a short note of what you have said, not in your good language but to remind myself:—

“on a proved danger, whether external or internal, the Governor-General to take charge.”

*Pandit M. M. Malaviya:* Yes, to suspend the constitution to the extent necessary and to take charge.

*Chairman:* Yes, that follows, and take charge of the Army. It is “on a proved danger,” and I suppose the Governor-General would be the person who would decide whether that danger existed.

*Pandit M. M. Malaviya:* Yes, but he will discuss the matter with his Ministers.

*Chairman:* Yes, unless he is a very foolish man.

*Pandit M. M. Malaviya:* He will also record his reasons. Those will be the safeguards against any hasty exercise of his power.

*Chairman:* “He will record his reasons.” What in—some newspaper?

*Pandit M. M. Malaviya:* No My Lord, I do not think that a Governor-General records his reasons in newspapers.

*Chairman:* I was wondering where he should record it—in some book?

*Pandit M. M. Malaviya:* Record it among the State papers—on some paper which would become a State paper.

*Chairman:* Not necessarily for publication to the Press?

*Pandit M. M. Malaviya:* No.

*Chairman:* I am much obliged.

*Pandit M. M. Malaviya:* Unless he should think it necessary. There may be an occasion when to justify his action he may wish it to be known why he had taken that extraordinary step.

Now, My Lord, that is one matter on which I regret to say I differ from my friend Sir Tej Bahadur Sapru; but I think it is a matter on which an agreement should still be possible, because I wish to provide for what I think he also wants to provide for, *viz.*, that in case of a difficulty the difficulty should be met by the exercise by the Governor-General of his emergency powers.

Then, My Lord, there are other duties which will devolve upon the Indian Army Member, and the most important of these is the duty of building up the national Army. The Indian Army is, as I have said, one hundred and fifty-eight thousand strong, and the capacity of our soldiers has been proved.

*Chairman:* Did you say that was the 1928 figure?

*Pandit M. M. Malaviya:* Yes, 1928.

*Chairman:* I have got the last one, which is one hundred and sixty thousand.

*Pandit M. M. Malaviya:* Thank you. When I come to the question of expenditure I shall remind the Committee, in support of what Sir Tej Bahadur Sapru has said, of the need for economy in military expenditure. The question of the continuance of British troops in India requires to be examined from two points of view. Firstly, the need of them in the country, owing to the apprehension of danger from outside or inside; secondly, the question of economy.

*Chairman:* I hope you will touch on these two points, because I am very anxious to follow you on these points, if you will kindly in the course of your remarks address yourself to two questions. I would like you to tell us, firstly, whether you consider the Army as at present constituted too large; I should like your opinion; and, secondly, whether you think it is being run too expensively. They are two different questions rather.

*Pandit M. M. Malaviya:* My Lord, I consider that the Army as it is constituted to-day, is too large—much larger than the needs of the country and the capacity of the people to bear the expenditure justify.

*Chairman:* We will come to the capacity in a moment. What do you say ought to be the size of the Army in India? Have you come to any conclusion?

*Pandit M. M. Malaviya:* I should not myself venture an opinion on that matter; but what I would suggest is in support of what Sir Tej Bahadur Sapru has said, with a little variation—that we should appoint a Committee consisting of military experts and Indian public men to go into this question of what the size of the

Army should be, and report on it, and that the future Government of India should act upon its recommendation. I am willing that such a Committee may be appointed even now, and that the recommendation of the Committee, accepted by representatives of this Conference and His Majesty's Government, may become part of our agreement on which the new constitution is to be based. I do not venture to suggest what particular reduction should be made because it is not for a layman like me to express that opinion.

*Chairman:* No, quite right.

*Pandit M. M. Malaviya:* But I do submit that the Army is greater in numbers than it should be.

*Chairman:* Then are you contemplating a fixed number or a fluctuating number?

*Pandit M. M. Malaviya:* I contemplate a fixed number of the standing Army; but I propose that we should do what other civilised Governments have done: add to that standing Army a national Army. Japan started with a small national Army. It has had a very large militia. India needs a militia. India cannot go on paying for a standing Army to the extent that it does at present. Therefore, my proposal is that there should be a small compact standing Army of the size to be determined in accordance with the opinions of military experts and public men, and that there should also be a militia which should be quite large in number and which should be available in an emergency. In that way the training of the people for national defence will be expedited, and there will also be a great deal of economy in expenditure.

*Chairman:* What period do you contemplate for a militiaman to serve?

*Pandit M. M. Malaviya:* Ordinarily I should think a period of three years, from eighteen to twenty-one, should be sufficient, with refresher courses in subsequent years. But here again I should not be dogmatic. These are matters on which, as I have said, I should like the future Government of India to depend upon the advice of military experts and public men sitting together in consultation and conference. I have mentioned this because I believe it is a system which has to be introduced, which has much to commend it, both because it will build up the spirit of national defence among the people, and also lead to a considerable amount of economy.

*Chairman:* What do you contemplate as the size of the militia body?

*Pandit M. M. Malaviya:* That depends. That again is a matter on which any dogmatic expression of opinion would not perhaps be wise.

*Chairman:* It would be a voluntary service? What do you contemplate would be the cost of it?

*Pandit M. M. Malaviya:* The cost has to be worked out. I cannot give you the exact figure, but, whatever that cost may be, it will be worth it, because on the whole a militia like that will cost but a fraction of the expense of a standing Army, and the larger the militia is the greater will be the chance of reducing the total expenditure on the Army.

*Chairman:* Just one final question. The recruiting for that will be from all over India?

*Pandit M. M. Malaviya:* The recruiting for that will be from all over India, and the recruits should come from all classes of the people. I understand you have in this country a system of picking out boys at school for a military career and giving them military education in the schools, and then sending them to a central institution to train them for officers' duties. That would be the sort of system I have in mind; but we must examine various systems to see which will suit the needs of India best.

Now, My Lord, this part of the duty of the Indian Army Member will be not less important than his duty of presenting the military Budget, and so on. So far as that part of the work is concerned, if Indians are to receive instruction in all arms, who can be trusted more satisfactorily to see that they receive such education than Indians themselves? An Indian Member responsible to the Legislature, obtaining supplies from the Legislature and carrying out the resolutions of the Legislature in regard to the instruction of Indians in all arms, will be just the person needed to build up a national Army.

We have heard the history of the many Committees which have been appointed. The story is a sad one. Ever since 1858 when the Indian Army was reorganised we have been complaining very strongly of the expenditure on the Army. The Government of India themselves have made repeated protests. I do not think there is any subject on which the protests of the Government of India were stronger or more numerous than on the question of military expenditure, but their protests have been in vain. Just to show the strength of feeling of the Government of India, perhaps I may give a sample of the protests which they have made and which have not been heeded by the War Office and His Majesty's Government here. The despatch from which I will quote is typical of many other despatches which have been sent by the Government of India. On the 8th February, 1878, the Government of India wrote to the Government here that "placed as it was under the serious responsibility of so administering the affairs of the greatest dependency of the British Crown that while British supremacy is strongly guarded the means of securing that end shall not unduly weigh on the people of the country, it was constrained to represent to Her Majesty's Government that the burden thrown upon India on account of the British troops is excessive, and beyond what an impartial judgment would assign in considering the relative mate-

rial wealth of the two countries and the mutual obligations which subsist between them. . . . All that we can do is to appeal to the British Government for an impartial view of the relative financial capacity of the two countries to bear the charges that arise from the maintenance of the Army of Great Britain and for a generous consideration of the share assigned by the wealthiest nation in the world to a dependency so comparatively poor and so little advanced as India."

*Chairman* : That was the year before the second Afghan War?

*Pandit M. M. Malaviya* : It was 1878. After the second Afghan War, the Government appointed an Army Commission, which also recommended a reduction in expenditure. It reported, so far as I remember, about 1880.

*Chairman* : Was that just before or just after Lord Ripon took office?

*Pandit M. M. Malaviya* : I think it was just before. Lord Ripon's tenure was from 1880 to 1884. During all these many years since we have been complaining of the expenditure of the Army being excessive and beyond the capacity of our people to bear. The Hague Conference laid it down that no country should spend more than twenty per cent. of its revenues on Army expenditure. In India forty-five per cent. of the revenues is being so spent. There has been a reduction recently in view of the great financial stringency, but that is a trifle. We have been urging a much larger reduction.

There are two ways in which this expenditure can be reduced. One is by reducing the British troops and gradually removing them altogether from India! It having been recognised that in future Indians themselves must bear the responsibility of defending India, British troops will have to be removed. But the question of removal has to be looked at from two points of view. One is the immediate removal of a portion of the troops and the other is the progressive removal of the rest in course of time. At present, of the sixty thousand troops, about thirty thousand are held for what are called internal security purposes. That costs a very large sum of money to the country, and it has been urged more than once that the number of British troops for internal security has been unduly increased and they should be removed.

*Chairman* : Removed, or reduced?

*Pandit M. M. Malaviya* : The portion of the British troops which is spoken of as the internal security troops should be removed, i.e., brought back to England. That will bring a large amount of relief to the finances of the country. If that cannot be, if the Expert Committee I have suggested should report that they should not be removed in such a large number at once, we should expect that Committee to indicate how they may be removed in progressive numbers in the course of years.

That will be one important source of reduction in military expenditure. We had been urging reduction for many years, ever since the Congress came into existence, but our prayers have not been heeded. Now, however, there is the opportunity, when the Government find themselves compelled owing to financial reasons to reduce that expenditure, and they cannot do better than to take up the question of a substantial immediate reduction of military expenditure by the removal of a portion of the British troops which are in India.

The second aspect of the duties of the Military Member, as I have submitted, will be to look after the Indian portion of the Army; the third, to organise the National Militia, and the fourth, to establish and maintain institutions for military instruction in all arms in the country.

*Chairman:* Is your only cure for the expenditure in the Army a removal of a block of the troops, or do you also say that it could be brought about by economising in other directions?

*Pandit M. M. Malaviya:* I am not in a position, not possessing the technical knowledge of the details, to say in what directions and to what extent other reductions should take place. But I believe, along with a large body of my countrymen, that the expenditure on the Army is very excessive, and can be reduced in many directions. Some of it is clearly unjust. Look at the charges for capitation. I do not know what language to use in speaking of it. But, you see, it is regarded by us as a clear injustice, a thing which cannot be justified for half a moment, and yet this has gone on for ever so long, and so with regard to many other charges which India has had to bear. Among our Indian public men, no one has studied this question and spoken and written on it more than my esteemed friend Sir Dinshaw Eduljee Vacha, and he has shown in how many instances the Army expenditure has been put upon India without any justification, and I submit that all those questions require examination. The capitation charges are only one item; there are many other charges which require examination. I cannot say here in what definite directions the reductions should be expected. It is for that reason that I have suggested the appointment of a Committee consisting of military experts and our public men who should go into the question and make recommendations as to what should be done.

I was speaking on the question of the instruction of Indians in military matters. It is a sad story to tell that Indians have not been admitted to the military institutions in this country for the last several decades, more than half a century, and it is only recently that some of them have obtained King's commissions. Your Lordship and the Committee will know that for nearly forty-five years the Congress has been urging that Indians should be admitted to the higher ranks of the Army by being given the training that



is needed for them, but all that prayer went unheeded. It was only after the war that Lord Hardinge recommended that King's commissions should be thrown open to Indians to a limited extent, and a few commissions have been so thrown open. Since then, as Sir Tej Bahadur Sapru has reminded the Committee, several Committees have been appointed. There was Lord Rawlinson's Committee. I appeared before them. I had the honour of putting the case for the reduction of Indian Army expenditure before them, and also the case for an Indian Member and for the introduction of military schools and colleges, but nothing came out of it except that the Army was reduced by seven thousand troops, so far as I remember, in the year that followed, or shortly after that. That was, I think, in the year 1921, but perhaps Sir Muhammad Shafi and Sir Tej Bahadur Sapru will remember better than I do.

*Sir Tej Bahadur Sapru:* Yes, it was 1921.

*Pandit M. M. Malaviya:* And the British troops were reduced by about seven thousand or so in the year that followed, or about that time, but there it stopped. I urged the creation of a military college, of an Indian Sandhurst. I even offered to raise money to establish that college if the Government were not able to find the money required; but the Commander-in-Chief and Sir Malcolm Hailey told me that they would find the money. The money was found and an institution was established in Dehra Dun, and the name of His Royal Highness the Prince of Wales was associated with it; but that is merely a school preparing boys for going up for a military career; it is not an Indian Sandhurst.

Then came the Skeen Committee, of which my friend Mr. Jinnah was a member, and we know the sad end of the recommendations of that Committee.

So, My Lord, we have felt that to place the responsibility of training Indians in all arms upon our British fellow-subjects is not the correct thing. We must relieve them of that responsibility and take that responsibility upon ourselves. Therefore I submit that the Indian Member of the Army if he is appointed shall have this very important duty to perform, that in accordance with the wishes and recommendations of the Legislature he will be responsible for the establishment and maintenance of military institutions for training in all arms. That is a very vital need of the situation. When England decided that responsible government was to be established in India, there could be no doubt that the period during which that government would be established in its full form could only be a limited one. That decision meant that England is going to withdraw British troops from India. That decision means, as has been stated by the sub-Committee, that the responsibility for national defence must hereafter rest upon Indians. We Indians must prepare ourselves and we should be allowed to prepare ourselves in a fair way for discharging that responsibility. I feel, and many with me feel, that we cannot

discharge that responsibility, you will not give us a fair trial, it you will not let us have an Indian Member in charge of the Army.

And there is another reason why we want it. For the next twenty years or twenty-five years or twenty-eight years, during which time British troops may continue partly in India, or during the time which will be necessary to Indianise the Army by the creation of Indian officers, whatever the period may be, if you do not allow the Indian Member to be responsible to the Indian Legislature and to discharge the duties to which I have referred, he will not have gained experience in the subject. Others working with him in the Legislature will not have gained any experience in the subject; and in order that our people should begin to acquire that experience of dealing with Army affairs and matters which is essential, I submit it is just and proper and necessary that the Indian Member of the Council should be responsible to the Legislature.

I have said, My Lord, that I should start institutions all over the country to train our young men for the Army, and that recruitment should be open to all classes. I think it was a great wrong which was done when the recruitment was limited to certain classes of people in the country. No doubt those who have had the best opportunity to serve as soldiers have distinguished themselves as soldiers, and we are proud of the fact; but I believe, along with many of my countrymen—I may say the educated community generally—that every man whom God has created with the qualities of man is competent to bear arms and to defend his country—to defend his hearth and home and his country. What is needed is that he should be given the education that is necessary to enable him to do it in the best way possible.

In the fifties of the last century the Japanese were in a very poor condition. It was thought by some that two Europeans or Americans might drive five hundred of them. The freedom of their country was in danger. They faced the difficulties and awoke to the necessity of the situation. They had their revolution and restoration in 1868. One of the first acts which they performed was the creation of an Army. They began to instruct young men in patriotism in all their schools and they introduced military instruction. Between 1882 and 1895, in that short period, they had so trained their Army that they defeated China in the war in 1895. They had so trained themselves further that in 1905 they defeated Russia; and since then all great powers have welcomed Japan as a great power and as a friend. India wants the opportunity to do likewise and I submit that the misgivings which are entertained by my British friends about our capacity to be able to build up our Army should be viewed in the light both of the past history of India and of the achievements of our people in recent times. As far as past history is concerned, our soldiers have given evidence of their great soldierly qualities. I do not know that I should detain the Committee at any length on this question;

but merely in the hope that the doubts of my British friends may possibly be somewhat removed, I should like to read to the Committee here what one of your own distinguished writers has said.

"On this preliminary point of quality"—wrote Mr. S. S. Thorburn, late of the I.C.S., in the *Quarterly Review* of July, 1896—

"I think the preponderance of expert opinion favours the belief that Sikhs, Pathans, Gurkhas, and after them the best classes of Hindu Jats, Rajputs, and Punjabi Mussalmans, are as good fighting men as any in the world. Only a few months ago Sir Ian Hamilton, in the scrap book on the first part of the Russo-Japanese War, recorded, 'Every thinking soldier who has served in our recent Indian campaigns is aware that for such operations a good Sikh, Pathan or Gurkha battalion is more generally serviceable than a British battalion.' In the next page he wrote, 'There is material in the North of India and in Nepal sufficient and fit, under good leadership, to shake the artificial society of Europe to its foundations.'"

Now, I do not want our soldiers to shake the artificial society of Europe to its foundations. I feel that I shall have done my duty if I can shake the disbelief and suspicion and misgiving that occupies the minds of my British fellow-members with regard to our capacity to defend ourselves.

Let me quote one more instance. In a book, Colonel Merewether's "Indian Corps in France", Lord Curzon said in his introduction:—

"The book describes the manner in which the force, and the drafts and reinforcements by which it was followed, comported themselves in the fearful struggle of 1914 and 1915.. that the Indian Expeditionary Force arrived in the nick of time, that it helped to save both the cause of the Allies and of civilisation, after the sanguinary tumult of the opening weeks of the War, has been openly acknowledged by the highest in the land from the Sovereign downwards. I recall that it was emphatically stated to me by Lord French himself. The nature and value of that service can never be forgotten."

But the memory of man is short, and I am sorry to think, My Lord, that the capacity the Indian soldiers displayed on the battlefields of Flanders, France and elsewhere, which they displayed on many battlefields, is forgotten when we are discussing the capacity of Indians to officer their own Army and be able to defend their own land.

*Chairman:* Thank you very much, Pandit Malaviya. You will allow me to say that we have not forgotten the valour of your Indian troops, and I will not readily forget your speech. I will

not say I agree with every word of it; you would not expect me to do so the first time, but I am profoundly thankful you did not go back to India with that speech locked up in your breast, and I am grateful to you for what you have said.

*(The Committee adjourned at 4-10 p.m.)*

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PROCEEDINGS OF THE FORTY-SEVENTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE, HELD ON TUESDAY, THE 17TH NOVEMBER, 1931, AT 11 A.M.

*Defence (concluded).*

*Pandit M. M. Malaviya:* My Lord Chancellor, I do not wish to take up much more of the time of the Committee, but only to draw attention to one fact. I fear that it is not realised how strong Indian public opinion is on the question of the transfer of the control of the Army to the new Legislature of India. I submit that the Government here should not ignore that public opinion. It will make a great difference to the people in India whether the Army Member is in charge of the Army or is not. It will make a great difference to them whether he is responsible to the Governor General or to the Legislature. I have suggested how, even if the Indian Member is responsible to the Legislature, the Governor General should have the power under my proposal to deal with the cases of emergency which may arise. He may suspend the constitution, in the language of the law, and may take charge of the Army for the time being. I submit that that provision regarding the necessary emergency power to deal with the British troops ultimately gives all the assurances that may be desired to meet such situations as may arise. That provision I very strongly urge upon the Committee, namely, that it should recommend that the future Indian Army Member should be responsible to the Legislature. My Lord Chancellor, I wish to say nothing more.

*Diwan Bahadur Mudaliyar:* On a previous occasion I had the opportunity of saying something about administration. I hope the result of the present discussion will emerge in a Report from your hands, Lord Chancellor, which will prove highly useful. Two views have been put forward with reference to the Army. One of these, by Sir Tej Bahadur Sapru, recognised frankly that during the transitional period the Army should be a reserved Crown subject, but may be administered by an Indian Member. The other view, advocated by Pandit Malaviya, was that from the initial stage the Army should be treated as an ordinary subject, subject to the jurisdiction of the Legislature, but with overriding powers in the Governor General as representative of the Crown.

I may at once state that I personally, as I made clear on the last occasion, hold to the view put forward by Sir Tej Bahadur Sapru, and I do so because frankly I feel that of the two alter-

natives, facing the facts, the view of Sir Tej Bahadur Sapru is the better. The logic of facts and of realities has driven Pandit Madan Mohan Malaviya to suggest and to concede that in the event of its being necessary the Governor General should have extraordinary powers, such extraordinary powers indeed as will authorise him to suspend the constitution. Well, if that position can be calmly contemplated I feel personally, as a constitutionalist, that it will be more satisfactory from my point of view to recommend from the initial stage that during the transitional period this subject should be treated as a reserved subject or as a Crown subject.

Lord Chancellor, there has been a great deal said about the strength of the Army, about the personnel of the fighting forces, and so on. I wish to make it quite clear that at this stage I am not willing to consider the question of the strength of the Army at all. It is very often believed that the large expenditure on the Army is due to the fighting forces. A more realistic idea of the relationship between the fighting forces and the non-fighting forces will enable many of us to see that it is not the fighting forces that consume all the amount that is devoted to the Army, but that it is what are called the ancillary and auxiliary services that take up much of the expenditure on the Army. It was my privilege within the last few months to serve on the Army Retrenchment Committee of the Assembly, and it was a matter of great surprise to me that, out of the fifty-two crores that were budgeted for Army expenditure, not more than eighteen crores were devoted to the pay, salaries, allowances, etc., of the fighting units, and that the rest of the amount was really spent on what may be termed the auxiliary services of the Army.

If you compare, again, the position of military expenditure in the year 1913-14, just before the War, and the position of military expenditure to-day, you will draw a similar conclusions—that it is not the strength of the Army that has to be tackled so much as the growth in expenditure in other subsidiary services. In 1913-14, the Army Budget was about twenty-nine crores. This year it was fifty-two crores. In 1913-14, the pay of the services of the fighting forces was about twelve and a half crores. This year it is about seventeen and a half to eighteen crores, so that you will see that it is not the fighting services that have taken up all the increased expenditure, but the ancillary services that have really swelled the amount of the Budget. Again, it will be found that after the war reductions have gone on in the strength of the Army, and that compared with the position in 1913-14, just before the war, the Army has been very considerably reduced in its personnel, the total reduction up to last year being about fifteen thousand British and twenty-eight thousand Indian active ranks and three thousand Reservists as compared with 1913-14. I have drawn your attention to this before—that there is a very incorrect opinion prevailing that it is the strength of the Army that is responsible for the growth of

the expenditure, and that unless the strength of the Army is materially reduced any reduction in Army expenditure is not possible. We in the Army Retrenchment Committee, on the other hand, have found out quite clearly that without reducing a single soldier of the Army a very considerable reduction of expenditure can be made.

These are subjects which are relevant for consideration when the question of the contract Budget of the Army is to be fixed, and I therefore venture to join in the hope that the question of the reduction of the Army will be taken up after the Indian Member has been in charge of the subject for some months or years, and not at the present time, and that the contract Budget may be arrived at as the result of enquiries which are being carried on still by the Army Retrenchment Committee and by various other expedients that may be devised for arriving at that contract Budget. It is not essential to touch on the question of the strength of the Army to get a reduced Army Budget fixed for a first period of five years.

Sir Tej Bahadur Sapru very rightly emphasized one aspect of the question relating to the Army, namely, that the Army should be in charge of an Indian Member. If I followed the whole logic of his speech aright, it was this, that while we would agree to make the subject a Crown subject or reserved subject, there was one essential for which he strongly pleaded, namely, that the subject itself should be in charge of an Indian Member.

All the reforms that we foresee regarding the expenditure of the Army and the strength of the Army could be worked out only if there is an Indian Member in charge of it. At any rate, the future Federal Legislature would have confidence that a right examination of these questions is taking place only if the Army is administered through an Indian Member.

If, on the other hand, as I said once before, the Army is in charge of an official European Member, you straight away give the impression to the Federal Legislature that all is not well with the administration of the Army. You make the Members of the Legislature suspicious and you make them examine in a very critical spirit, and perhaps necessarily in a hostile spirit, all the proposals he may make in perfect good faith. You therefore queer the pitch of administration so far as the Army is concerned, and it is accordingly not the line of practical politics to have the administration of this subject in the hands of an official Member.

The question was asked, during Sir Tej Bahadur Sapru's speech, of what the position of the Army Member would be in relation to the Commander-in-Chief, and I believe Pandit Madan Mohan Malaviya said it would be analogous to the position of the Secretary of State for War in this country. At present the Commander-in-Chief is also the Member in charge of the Army, and he is advised by a General Council. I take it the Army Member would similarly have a General Council attached to him,

including the Commander-in-Chief, who will advise him and direct him in relation to the day-to-day administration of Army affairs.

Sir Tej Bahadur Sapru was asked what would happen if beyond the contract Budget figure an additional amount was required for the Army, and he replied, very rightly in my opinion, that His Excellency the Viceroy would be the proper person to direct the additional expenditure if more expenditure were required. I entirely associate myself with that view, but I should like to have one piece of machinery devised—it may not be in the constitution, perhaps—to help the Viceroy to come to a conclusion on this point. In your country you have the Committee of Imperial Defence, which goes into questions relating to the Army and advises the Secretary of State for War and other members of the Cabinet on many of these questions. I do not know whether there is any machinery at the present time in India which is comparable to the Committee of Imperial Defence. My own personal impression is that there is not. I feel that that is a great drawback even under the present circumstances, and I certainly visualise under the new constitution that a Committee of Indian Defence will be set up which will be to a certain extent an advisory body for advising the Viceroy in regard to many of these matters.

The Committee of Indian Defence would naturally consist of the Prime Minister, the Finance Member, the Army Member, the Commander-in-Chief, perhaps the Chief of the General Staff, and one or two others, and they would be in day-to-day contact with the main general policies of Army administration, particularly with reference to questions of frontier policy; and it is through that Committee that the Viceroy will be advised when any question of extraordinary expenditure over and above the contract Budget is under consideration or requires his decision.

Lord Chancellor, Sir Tej Bahadur Sapru quite rightly emphasized, on this aspect of the question, that the position and distinction at present prevailing between the martial and non-martial races should be done away with, and that the Army should be open to recruitment to everybody who is physically and otherwise fit to enter the ranks of the Army. This is a very crucial question from many points of view. I need not refer to the fact that the present policy of classifying people into martial races and non-martial races has led to a great many difficulties—difficulties some of which have exhibited themselves in the course of the proceedings of this Conference—difficulties which have led to communities making special claims, and which have led to geographical areas being described as garrison Provinces. In the future Federation it would be fatal if any federating Unit were under the impression that it has a special key position with regard to the defence of India because of the amount of recruits it contributes to the Army. It would be fatal to the peaceful working of the Federal Constitution if there were an impression in any part of the federating

whole that that part is of special value from the martial point of view to the Federation as such. I, therefore, lay a great deal of emphasis on this claim which has been put forward that recruitment to the military ranks should be thrown open to all classes. I should like to quote here the views of the Government of my Province which, in commenting on the Simon Commission Report, very clearly stated that the Army should be thrown open to all classes. I do not make any special claim as a Madras, though Madras can well be proud of the fact that, in the early stages at any rate, their martial character was never questioned. The Government of Madras say this in paragraph 46 of the Report:—

“ The Government of Madras consider that the interest of the Province demands that the military tradition and the proved military capacity of the Madras should be recognised by the restoration of the old Madras regiments. So long as the Army is an Imperial concern, it is obviously desirable that it should be associated by recruitment with as wide an area as possible; and the revival of the Madras regiments may also help towards the attainment of the goal mentioned in Volume II, paragraph 211, of the Report, the possession by a self-governing India of military forces of its own; for the fact that at present such an overwhelming proportion of the Army is recruited from the Punjab and the United Provinces is one of the obstacles to the formation of an Indian National Army on which the Commission has laid stress.”

I therefore plead, Lord Chancellor—though I realise it will not be part of the constitution—that in the future policy which will be adopted with regard to recruitment to the Army there will be no restriction, geographical, racial or otherwise, regarding the men who can come and play their part in the defence of the country.

Then, My Lord Chancellor, there is the question of the contract Budget, and how it should be discussed in the Legislature. I take it that the privileges which the Legislative Assembly now enjoys of discussing the Army Budget would certainly not be withdrawn from the Federal Budget. It would not be open for the Federal Legislature to cut any particular item of the demand, but it certainly ought to be open to the Federal Legislature to discuss the Army Budget in the same way as at present, and the periodic re-examinations, both with reference to Indianisation and with reference to the amount required for the Army, which would be arrived at by agreement between the Federal Government and the British Government or the Viceroy representing the Crown, will be laid before the Federal Legislature for ratification from time to time.

As regards the process of Indianisation Sir Tej Bahadur Sapru has referred to the fact that the Chetwode Report has not been acceptable to the majority of Indian opinion. With reference to



the intake of candidates for the new Sandhurst which is to be established in India, I learn from the members of that Committee that a decision was imposed upon the Committee and that the Committee was not permitted to discuss that question. It seems to me that that is the fundamental policy underlying the Chetwode Committee Report. We understood on the sub-Committee on Defence that that question was also going to be thrown open for discussion and decision. In any case I am prepared to agree to the proposal that Sir Tej Bahadur Sapru has made, that with an Indian Army Member in charge of the Army Department for the first two or three years different proposals might be placed by him before the Government and decisions might be arrived at; and that in the meanwhile we may not stop the progress of Indianisation but go on with the establishment of the local Sandhurst College.

*Lord Reading:* My Lord Chancellor, at the present moment we are discussing the one point, the Army and National Defence. Of course, there are four questions which you have indicated will have to be discussed; I will confine my observations to the Army and National Defence but in much of what I have to say I shall be covering by general observations the other three points.

Of course, with regard to all this discussion it is animated by the desire so far as we can to arrive at conclusions which will be agreeable and which at last will enable a constitution to be fashioned to work in the future in India. That is what has been in our minds, and, speaking for myself, for the reason that I have given before, that I do not want to associate other Delegates who are members of the Government with observations which I make, which are not binding on the Government, and are only binding on myself and the Liberal Party, so far as they have been accepted by them. I want to make quite clear at the outset that nothing that has occurred during the course of the debates in this Committee or otherwise in the Conference has modified or affected the opinion that I expressed at an earlier stage—in January of this year—with reference to what I believe to be the policy to be followed in the future for India. I then stated my view and I do not want to repeat it. All I desire to say is that I remain of the opinion that there should be Provincial autonomy, and also there should be responsibility at the Centre, qualified or limited by certain reservations and safeguards which I enumerated at the time.

May I be permitted to say, Lord Chancellor, in order to save time, that I have done a thing that I very rarely do, and dislike doing, namely, to study a speech which I made some time ago? I have been reading what I said in January. I have now come to the conclusion that if I were to make it to-day there is nothing that I would change in what I then said except for certain matters of detail which were left open for adjustment, and upon which my mind would be perfectly free and open now—matters of detail

which are hardly, I think, worth discussing at this stage. I can see no reason for changing any of the views I then expressed.

If I may deal with the subject of the Army and National Defence, which is the subject actually before us now, I may be mistaken, and I do not want to enter into any discussion about it because I am quite prepared to accept the position, but I thought that the position taken by Sir Tej Bahadur Sapru in his speech yesterday differed from that which he had put forward earlier in this Committee when we discussed these questions.

It was a change inasmuch as I had understood hitherto that he was in favour of the administration of the Army being left entirely to the Viceroy and of treating it as a Reserved subject. I did not understand—I am not complaining of it in the slightest degree—that he was advocating in his earlier speech that there should be a Minister for the Army in the sense which he has now indicated. I did understand that he accepted the view (as I thought) that there should be a Minister responsible to the Governor General, a Minister or Adviser, and that he would prefer—that was the suggestion—that he should sit with the other Ministers or Advisers to the Governor General whenever there was a meeting of the Cabinet, which in itself would be responsible to the Legislature.

*Sir Tej Bahadur Sapru:* So do I now. So far as that part of my speech is concerned I have not in the slightest degree changed my position. All that I said yesterday was that I contemplated the Army Member to be an Indian, and probably the only difference that you can find between my speech of yesterday and my speech of last year was that I said last year that I would leave it to the discretion of the Viceroy to appoint his Army Member, though I would prefer that Member to be an Indian. Yesterday I was more positive, and I said that there must be an Indian Army Member. That is the only difference. So far as the constructive side of it is concerned, I stand by every word of it I said last year.

*Lord Reading:* Well, that does indicate the change I had in mind. Sir Tej Bahadur Sapru has made it quite clear now, though I confess that as I read parts of his speech I was not quite clear whether there was a change of opinion. However, I follow now, and as I said, I am making no complaint. I think it was open to any member to change his opinion, and I can quite well conceive that Sir Tej Bahadur Sapru, in listening to the arguments here and in consultation with his friends, has come to the conclusion that he would prefer to have an Indian Minister or Adviser responsible, as he says, to the Governor General.

I do not want to take up time with that, because I have one or two observations only to make upon it; but with regard to Pandit Malaviya's proposals all that I can say is that I could not accept them at all.

I think he has in mind, if I followed him correctly, meeting the obstacles that at present exist and the difficulties that might confront the Minister in India if he were responsible to the Legislature, if he were to take over everything and become responsible from beginning to end and without limitation to the Legislature.

I do not understand how it is possible, in view of what we have put forward, that a proposal such as that which Pandit Malaviya has made could be acceptable; it is the very negation of everything that we have indicated from the start. This proposal is to have an Indian Minister responsible to the Legislature, and to have that Minister responsible to the Legislature throughout. He suggests that the control of the Army and of everything connected with the Army should lie with an Indian Minister responsible to the Legislature, that the only right that the Governor General would have of intervention would be in an emergency, when he should step in, and, as I follow the proposal, suspend the constitution.

I think that was the phrase used, and, if I may be permitted to say so, it is a most awkward predicament in which to place the Governor General in case of an emergency. It seems to me to lead to a condition of things which would be quite unworkable.

All I desire to say with regard to it—and I do not want to travel through all the various arguments—is that, to my mind, it is of the essence that if responsibility at the Centre is to be conferred upon the Indian Legislature, which I desire and advocate, there must be reservation with regard to the Army that that shall remain for the Governor General, and that the Governor General shall have the power to appoint a Minister—it was suggested one of three, but I am not particularly concerned with numbers—and that he should have the benefit of that Minister's advice and should select him.

I have never suggested that he must necessarily be an Englishman or that he must necessarily be an Indian. I leave it open to the Governor General, as Sir Tej did when he first made the proposal. These matters are entirely for the Governor General.

I wish to state very plainly to this Committee, however, adopting the principle now, as throughout, that we should be quite frank with each other in respect of these remarks, that any proposal for a responsible Government would be unacceptable to me if it did not make the exception that the Army must be in the hands of the Governor General and that any Minister must be responsible to him.

I should like to make just one qualification with regard to that in order to meet certain points. I can quite understand that there might be certain subjects in respect of which there may be a desire to have somebody responsible to the Legislature. There are various ways of meeting that. So far as some of the questions

are concerned which were dealt with by the Committee over which Mr. Thomas presided, there are matters in regard to which I can quite understand the Legislature and the Ministers would desire to make representations to the Governor General. There might be a desire that some things should be carried out more promptly than had been the case, and so on, but all that is really a matter of detail.

I think the mistake we are making in considering this is in assuming that the conditions are to be the same after we get the new constitution as they have been hitherto. As I ventured to say once before, at an earlier stage, I think we have to get into a different mentality, and I hope that then, when the new Legislature is constituted and the new Federal Constitution is in existence, it will be found that, so far from there being conflict or hostility between the Ministry and the Governor General, there will be, on the contrary, the most friendly co-operation and a desire to make everything work satisfactorily; there will be continuous consultation and continuous collaboration.

I cannot myself see why, in these circumstances, it should not be quite sufficient to be able to make any representation that might be necessary. It may be desired to have a Standing Committee of the Legislature or an Advisory Committee of the Legislature. I really care very little about what method be adopted, provided that the control and the responsibility remain with the Governor General throughout, and that he has the right of appointing an Advisor who will certainly not be a member of the Cabinet in a strict sense, because he will be responsible to the Governor General and not to the Legislature.

Now, Lord Chancellor, I said I would not take long, and I do not wish to take up any further time. My one idea in making this further statement is that I wanted to make it clear that I stand firmly by what I said earlier in the debate, which I have never repeated or had opportunities of discussing since. I make these remarks now only so that the position which I am taking up may be fully understood.

*Chairman:* We are very much obliged to Lord Reading. Now, in a moment or two I will ask Sir Tej Bahadur Sapru to open the discussion on external relations; but I would first of all like to draw your attention to what was said about this Army subject in our last Report. If you will look at page 17 of the Report, paragraph 11, we there said:—

“It is, however, admitted that this broad statement of the principle of responsible Government at the Centre, which will be the ultimate achievement of the constitution now to be framed, requires some qualification. There was general agreement in the sub-Committee that the assumption by India of all the powers and responsibilities which have

hitherto rested on Parliament cannot be made at one step, and that, during a period of transition—

(i) The Governor General shall be responsible for Defence”—leaving out the words not material at present—“(including relations with the Indian States) . . . and that

(ii) in certain situations, hereafter specified, which may arise outside the sphere of those subjects, the Governor General must be at liberty to act on his own responsibility and must be given the powers necessary to implement his decisions.”

Now we have had an interesting discussion, and Lord Reading has said that he stands by the position which is indicated there. But we have had from the Pandit Malaviya some interesting suggestions of which one must take a note: first of all with regard to the complete control of the Army; secondly, with regard to the total reduction of the Army; with regard to a partial reduction of the Army; and also with regard to the expenditure on the Army. In addition to that he raised a very important point, which was the fourth one, namely, how far you could gradually built up an Indian Army, which would have to be done by military training both of the officers in the way he suggested, and of the ordinary soldier by the enrolment of a national militia. Now all those questions are of great interest and obviously must be taken into very careful consideration. It is one of the advantages of a Conference like this that those questions, with some of which I was not familiar, should be raised; and in due course of time those matters will be taken into careful consideration. But I am sure the Pandit Malaviya will perfectly understand me that, although I sympathise with what he has said, I also, in addition to sympathy, want to display considerable caution; and therefore I am not prepared at the present moment to give my assent to all of your suggestions. Personally I should prefer to do what my Lord Reading has done, rather to reiterate what we have said at our previous meeting. But at the same time your important questions must be considered, and I hope in due time such weight and such consent will be given to them as appears to be possible. I am very much obliged to you and Sir Tej Bahadur Sapru for what you have said: it will not be lost sight of.

*Mr. Gandhi:* Lord Chancellor and fellow Delegates, I know that a tremendous responsibility rests upon my shoulders in having to give the Congress view on this most important question.

I have been sent here with the deliberate intention of exploring every possible avenue to achieve an honourable settlement, whether by open discussion at this table or by private conferences with Ministers and public men who influence public opinion here, and with all those who are interested in questions vitally affecting India. Therefore I am under obligation not to leave a single stone un-

turned in order to arrive at a settlement, if only because the Congress is wedded to a policy which is known to you all. The Congress is intent upon reaching its goal at the earliest possible moment, and holds also very decided views upon all these matters. What is more to the purpose, it is to-day, or considers itself to-day, capable of shouldering all the responsibilities that flow from responsible self-government.

That being the case, I thought that I could not possibly allow the discussion on this most important matter to close without placing, as humbly as I could, and as briefly as I could, the Congress view on the question.

As you are all aware, the Congress case is that there should be complete responsibility transferred to India. That means, and it has been there stated, that there should be complete control over Defence and over External Affairs; but it also contemplates adjustments. I feel that we ought not to deceive ourselves, deceive the world, into thinking that we would be getting responsible government although we may not ask for responsibility in this vital matter. I think that a nation that has no control over her own defence forces and over her external policy, is hardly a responsible nation. Defence, its Army, is to a nation the very essence of its existence, and if a nation's defence is controlled by an outside agency, no matter how friendly it is, then that nation is certainly not responsibly governed. This is what our English teachers have taught us times without number, and therefore some Englishmen twitted me also when they heard the talk that we would have responsible government but we would not have or would not claim control over our own defence forces.

Hence I am here very respectfully to claim, on behalf of the Congress, complete control over the Army, over the defence forces and over external affairs. I put in this also so as to avoid having to speak on it when Sir Tej Bahadur Sapru speaks on that subject.

To this conclusion we have come with the greatest deliberation. If we do not get this control at the time of embarking upon responsibility, I cannot conceive a time when, because we are enjoying responsibility in other matters, we would be suddenly found fit to control our own defence forces.

I would like this Committee for just a few brief moments to understand what this Army at the present moment means. This Army, in my opinion, whether it is Indian or whether it is British, is really an army of occupation. It does not matter to us, at any rate to me, a bit—I speak from experience—that they are Sikhs or that they are Gurkhas or that they are Pathans or that they are men from Madras or that they are Rajputs; no matter who they are, they are foreigners to me whilst they are in the army, controlled by an alien government. I cannot speak to them. Soldiers have come to me stealthily, and have been afraid even of speaking to me, because they felt that they might be reported. It

is not possible for us ordinarily to go to the places where the soldiers are kept. They are also taught to regard us not as their countrymen. Unlike any other country in the world, there is absolutely no correspondence between them and the ordinary civil population. This I give as my evidence before this Committee as a man who has endeavoured to some into touch with every part of Indian life, with all those with whom it was possible for me to come into touch; and this is not my own personal experience alone, but it is the experience of hundreds and thousands of Congress men that there is an absolute wall between them and us.

I am therefore quite aware that it is a tremendous thing for us at once to shoulder that responsibility and to have control of this Army, say, less the British soldiers. That is our unfortunate, unhappy position created for us, I am sorry to have to say, by our rulers.

Then there is the British section of the Indian Army. What is the purpose of this British Army? Every Indian child knows that that British Army is there, including the Indian Army for the defence of British interests and for avoiding or resisting foreign aggression. I am sorry to have to make these remarks, but that is precisely what I have learned and have experienced, and it would be unjust even to my British friends if I did not give expression to the truth as I have seen it and as I hold it. Thirdly, it is an Army intended to suppress rebellion against constituted authority.

These, then, are the main functions of that Army, and hence it does not surprise me that Englishmen should take the view they do. If I were an Englishman, and had also the ambition to rule another nation, I would do precisely the same thing. I would take hold of Indians and train them as soldiers, and I would train them to be loyal to me, so loyal that they would, at my command, shoot anybody I desired them to shoot. Who was it that shot people at Jallianwala Bagh, if it was not their own countrymen? It is therefore not a matter of surprise to me, but it is a fact which stares me in the face.

The existence of the British troops there is also intended to serve this very purpose; it holds the balance between these different Indian soldiers evenly. It undoubtedly protects, as it must protect, the British officers, and it protects British lives. Again I do not make any complaint, if I would assume the premise that it was right for Great Britain to occupy India, and that it is right for Great Britain to hold India to-day and to continue to hold India, no matter under what altered conditions.

That being so, I have no difficulty in answering the question which Sir Tej Bahadur Sapru would not face and which Pandit Madan Mohan Malaviya also would not face. Both of them said that, not being experts, they were not able to say to what extent this Army could be or should be reduced. I, however, have no such difficulty. I have no difficulty in saying what should happen

to this Army; that is to say, I would say emphatically that the whole of this Army should be disbanded, if it does not pass under my control, before I could possibly shoulder the burden of running the government of India under the terrible handicaps under which we are labouring as a legacy of alien rule.

Therefore, that being my fundamental position, I would say that if you British Ministers and British people really wish well by India, if you will transfer power now to us, then regard this as a vital condition, that the Army should pass under our control in its entirety. But then I have told you that I know the risk. That Army will not accept my command. I know that very well. I know that the British Commander-in-Chief will not accept my command; nor would the Sikhs, nor the proud Rajputs—none of them would accept my command. But I expect, even so, to exercise that command with the good-will of the British people, that they will be there at the time of transferring the command to teach a new lesson to these very soldiers, and to tell them that they are after all serving their own countrymen if they do so. British troops may also be told: "Now is the time for you not to remain here to protect British interests and British lives, but you are here to protect India against foreign aggression, even against internal insurrection, as if you were defending and serving your own countrymen."

That is my dream. I know that I shall not realise that dream here. That is what I feel; the evidence that is before me, the evidence of my senses tells me that I am not going to realise that dream to-day and here as a result of the deliberations of this Conference. But I should still cherish that dream. It is the dream I should like to cherish up to the end of my time. But, seeing the atmosphere here, I know that I cannot possibly infect British statesmen or the British public with the idea or with the ideal that this should be also their cherished mission. That is how I would interpret the Prime Minister's declaration; that is how I would interpret Lord Irwin's wishes. It should be the proud privilege and the proud duty of Great Britain now to initiate us in the mysteries of conducting our own defence. Having clipped our wings, it is their duty to give us wings whereby we can fly, even as they fly. That is really my ambition, and therefore I say I would wait till eternity if I cannot get control of defence. I refuse to deceive myself that I am going to embark upon responsible Government although I cannot control my defence.

After all, India is not a nation which has never known how to defend herself. There is all the material there. There are the Muhammadans, standing in no dread of foreign invasion. The Sikhs will refuse to think that they can be conquered by anybody. The Gurkha, immediately he develops the national mind, will say: "I alone can defend India." Then there are the Rajputs, who are supposed to be responsible for a thousand Thermopyæes, and



not one little Thermopylæ in Greece. That is what the Englishman, Colonel Tod, told us. Colonel Tod has taught us to believe that every pass in Rajputana is a Thermopylæ. Do these people stand in need of learning the art of defence?

I assume that if I shoulder the burden of responsibility all these people are going to join hands. I am here writhing in agony to see that we have not yet come to terms on the communal question; but whenever the communal settlement comes, it must presuppose that we are going to trust each other. Whether the rule is predominantly Muhammadan or Sikh or Hindu, they will not rule as Hindus or Muhammadans or Sikhs, but they will rule as Indians. If we have distrust of one another, then we want British people there if we do not want to be killed by one another. But then let us not talk of responsible government.

I at least cannot possibly think that we have got responsible government without control of the Army, and therefore I feel deep down at the bottom of my heart that if we are to have responsible government—and the Congress wants responsible government, the Congress has faith in itself, in the masses of the people, and in all those brave military races, and what is more, the Congress has faith also in Englishmen some day doing their duty and transferring complete control to us—we must infect the British with that love for India, which would enable her to stand on her own feet. If the British people think that we shall require a century before that can be done, then for that century the Congress will wander in the wilderness, and the Congress must go through that terrible fiery ordeal, it must go through a storm of distress, misrepresentation and—if it becomes necessary and if it is God's will—a shower of bullets. If this happens it will be because we cannot trust one another, because Englishmen and Indians have different angles of vision.

That is my fundamental position. I do not want to go into it in detail. I have put this case as forcibly as I am capable of putting it. But if this one thing is admitted, I am resourceful enough to submit and frame safeguard after safeguard which will commend themselves to any unbiased mind, provided that it is common cause that those safeguards must be in the interests of India. But I want to go further and endorse what Lord Irwin said, that although the safeguards in the pact are stated to be in the interests of India, they must be considered—I believe Lord Irwin used my name, and said that Gandhi also said they must be considered—as in the mutual interests of India and England. I endorse that. I do not conceive a single safeguard that will be only in the interests of India, not a single safeguard that will not be also in the interests of Great Britain, provided that we contemplate a partnership, a partnership at will, and a partnership on absolutely equal terms. The very reasons that I have given you to-day for demanding that complete control for the Army are also

reasons for pleading for, for demanding, control over our external affairs.

Not being well versed in what is really meant by external affairs, and having to plead my ignorance of what is stated in these Reports of the Round Table Conference on the subject, I asked my friends Mr. Iyengar and Sir Tej Bahadur Sapru to give me a first lesson in what is meant by external affairs and foreign relations. I have got their reply before me. They state that the words mean relations with neighbouring powers, relations with Indian States, relations with other powers in international affairs, relations with the Dominions. If these are external affairs, I think we are quite capable of shouldering the burden and discharging our obligations in connection with external affairs. We can undoubtedly negotiate terms of peace with our own kith and kin, with our own neighbours, with our own countrymen, the Indian Princes. We can cultivate the friendliest relations with our neighbours the Afghans, and across the seas with the Japanese; and certainly we can negotiate with the Dominions also. If the Dominions will not have our countrymen to live there in perfect self-respect, we can deal with them.

It may be that I am talking out of folly, but you should understand that the Congress has thousands and tens of thousands of foolish men and foolish women like me, and it is on behalf of these that I respectfully register this claim, again saying that with the safeguards we have conceived we shall literally fulfil our obligations. Pandit Madan Mohan Malaviya has sketched the safeguards. With much of what he has said I entirely associate myself, but that is not the only solitary safeguard. If Englishmen and Indians put their heads together, sailing in the same direction with no mental reservation whatsoever, it is possible, I submit with every confidence, that we would bring into being safeguards which will be honourable alike to India and to England, and which would be a guarantee for the safety of every British life and the safety of every British interest to which India pledges her honour.

Lord Chancellor, I cannot go further. I tender a thousand apologies for taking up the time of this meeting, but you will understand the feeling that is welling up in me sitting here day after day, and thinking of it day and night, how these deliberations can come to a successful issue. You will understand the feeling which actuates me. It is a feeling of absolute goodwill towards Englishmen, and a feeling of absolute service to my countrymen.

*Chairman:* Mr. Gandhi, I have listened with very great interest to your appeal, and I want you to be good enough, if you will, to help me personally. I am very much impressed first of all by what you call your dream—I cannot, of course, share your dream—and then I am very much impressed by your ideals. Those I can—perhaps not to the height that you entertain them—share to a

very great extent. I am just as anxious to secure peace and happiness in India as you are, and I am just as anxious as you are and as Lord Irwin is to carry out those conditions which he and you arrived at at the beginning of the year, and which, in paragraph 2, read as follows:—

“Of the scheme there outlined, Federation is an essential part; so also are Indian responsibility and reservations or safeguards in the interests of India for such matters as, for instance, defence, external affairs, the position of minorities, the financial credit of India and discharge of obligations.”

I will ask you to assume that I am just as anxious as you are to carry out that programme. I do not doubt your good faith. I ask you not to doubt mine.

You said, in the course of your remarks, that you hoped that we should be able to teach you the lesson of self-defence. (I am only summing up generally some of the matters that you referred to.) Nobody doubts the bravery of your fellow-countrymen. It has been, through the centuries, manifested on many a stricken field. But supposing it is right, as I think it is, that what you say is correct—namely, that at the present moment the Indians have to learn this lesson of self-defence. I agree with you. I think that is right. Now let me tell you my trouble.

If it is right that at the present moment an Indian Army is not ready for that, you are asking me and you are asking us to take a terrible responsibility when you ask us either to withdraw the Army or to reduce it to such a size as to make it not consistent with safety.

With much of what you say I have the greatest sympathy, but, if you will forgive me for saying so, Mr. Gandhi, the difficulty I feel is the responsibility that I should incur if I were a dictator and said “Tomorrow I will withdraw every English soldier.” It would be a terrible risk, and if anything happened to the peace and prosperity of India I for one could never forgive myself for taking a decision to do that when, upon admission, the lesson has to be learned how Indians can conduct their own defence.

It is because I feel that responsibility that, although I like to share your ideals, I feel it is asking me, at any rate, to go beyond what I really ought to agree to. I agree with you, Mr. Gandhi, that what we have to consider here are the interests of India; but give me at any rate the same credit that I give you when I tell you that honestly I do not think it would be in the interests of India to comply with an immediate request to withdraw the Army. It is a responsibility that I think no statesman who has a real regard for the interests of India—forgive me for putting it in that way—could justify himself in assuming. The time may come, and I hope it will . . . . .

*Mr. Gandhi :* May I just correct you? I have not asked for the withdrawal of the British troops. I do not think that there was

any sentence in my remarks to that effect, and if I did utter a sentence of that character I should like to withdraw it.

*Chairman* : Will Pandit Malaviya withdraw it also?

*Pandit M. M. Malaviya* : I have not asked for the withdrawal of all the troops. I said the removal of the internal security British troops should be considered, and that the removal of the rest of the troops should be carried out progressively over a series of years.

*Chairman* : I should like to ask Pandit Malaviya whether he agrees with the safeguards:—

“ There was general agreement in the sub-Committee that the assumption by India of all the powers and responsibilities which have hitherto rested on Parliament cannot be made at one step, and that during a period of transition the Governor-General should be responsible for Defence.”

Do you agree with that?

*Pandit M. M. Malaviya* : I have said, My Lord, that I would reserve emergency powers to the Governor-General, but I would make the Indian Army Member in charge of the Army responsible to the Legislature. I think the two things can be combined. I have not suggested the withdrawal of all the British troops at once; I have suggested that the internal security troops should be withdrawn, and that a scheme for reducing the rest of them should be drawn up in consultation with experts and public men. I have also mentioned that the Indian Army will remain, one hundred and fifty-eight thousand Indian soldiers officered mainly by Englishmen.

*Chairman* : Do I understand you to say that it is impossible at present to have a complete withdrawal of the British Army?

*Pandit M. M. Malaviya* : I do not say it is impossible. I think it is perfectly possible, but we have not asked for it. If I could persuade my English friends that the whole of the British troops should be withdrawn to-day I would do so, but I have not asked for it because I want to carry my English friends with us as far as we can.

*Chairman* : Well, my final reply to you is that if you would take that responsibility you are a braver man than I am, and, forgive me for saying so, you are not such a cautious man as I am.

*(The Committee adjourned at 1 p.m. and resumed at 2.15 p.m.)*

*Mr. Sastri* : I wish, with great deference to Mr. Gandhi, who spoke last, respectfully to dissociate myself and some others on this side from the opinion that he expressed upon the Army question. it requires some hardihood to differ from him on so vital a point, but in justice to ourselves, I think it necessary to reaffirm the position which, early last year, we took upon this matter.

I continue of the opinion that the Army and External Affairs had best remain Crown subjects during the period of transition. It was with great gratification that I listened to the speech of Lord Reading, in which, among other things, he reaffirmed his approval of responsibility at the Centre.

It appeared to me that the amount of responsibility for which we ask, even supposing these two great subjects of the Army and External Affairs excluded, is sufficient to constitute a great improvement on the present situation, and I believe it is an honourable and satisfactory basis for a settlement. The essential fact with regard to the Army which Lord Reading emphasised was that the eventual responsibility for that subject should remain with the Viceroy. We agree that that is an essential feature; but another essential feature that we have to remember is that in as brief a period as is compatible with the efficiency of the Army the transfer should take place from the Governor-General to the Legislature of India, and it was in order to remember during the period of transition that the transfer was to take place that, I think, Sir Tej Bahadur Sapru insisted on the condition that the Army Member should be an Indian. I venture to support that recommendation and to recommend it both to this Committee and to the Government. We are anxious that while the responsibility should rest in the hands of the Viceroy, arrangements should be set on foot and be continually kept in mind which will, at the end of that period, secure the transfer of the Army into capable and trustworthy Indian hands; and I believe that that necessity will be best satisfied under the suggestion put forward this morning by Sir Tej Bahadur Sapru.

*Dr. Shafa'at Ahmad Khan* : Lord Chancellor. the Muslim Delegation has carefully considered its position with regard to the question of the Army. As was stated by you, a section of the members of the Committee were anxious to express their opinion with regard to Defence and the other questions which will come up for discussion hereafter. We expressed our willingness that the discussion on these four points should proceed, subject to the essential and vital condition that until our demands and safeguards are incorporated in the constitution it would not be acceptable to us. We have felt all along that unless and until the communal question is settled and we know where we stand there is no reality about our discussion in these matters. However, in deference to your appeal and explanations and those of the Prime Minister we agreed to the course which you proposed.

In the circumstances, Lord Chancellor, we reserve our opinion on the question of Defence that is being discussed now.

*Sardar Ujjal Singh* : If I may be allowed to say a word at this stage, I should like to associate myself with the remarks which have been made by Mr. Sastri and Sir Tej Bahadur Sapru with regard to the question of Defence. I do not want to make any lengthy observations on this question. I agree that Defence

should be a Crown subject for the transitional period, and I would confine my remarks to one or two matters on which I must express my opinion.

The first is with regard to the throwing open of all ranks in the Army to all classes and members of all religions without any distinction. In principle I have absolutely no objection to this. I think that at present the ranks of the Army are thrown open to all classes; there is no disability. I must say, however, that whilst agreeing to this principle it must not be taken to mean that in future a certain portion of the Army will be reserved for certain classes, or that recruitment will have to be made from different parts of India even though the best material may not be available in certain parts. This would mean incurring a great risk, and in the matter of the Army such a risk should never be incurred; the best material whenever available should be taken; recruitment ought to be made on merit and on merit alone.

The second point to which I wish to draw your attention, Sir, is with regard to the pace of Indianisation. A programme of Indianisation ought to be drawn up by some committee here or hereafter, so that, according to that programme we may proceed to Indianise the Army ranks. The Indian Sandhurst Committee which sat last April or May did not satisfy Indian public opinion. They recommended sixty candidates annually for the higher ranks, but at the same time out of these sixty candidates nearly half the number—twenty-eight—were to replace the Viceroy's commissioned ranks, so that in practice the pace of Indianisation of the higher ranks would be the same as exists to-day. We are having twenty-nine candidates now, and if the Viceroy's commissioned ranks are to be filled in future out of those sixty cadets we shall be making absolutely no progress. Some committee ought therefore to be set up to draw up a suitable programme.

*H.H. The Nawab of Bhopal :* Lord Chancellor, I have very little to say on the question under discussion. We agreed last year to the Thomas Report on Defence, and we adhere both in principle and in the spirit and letter to the policy laid down in Clause 4 of that Report. We should also like to make a special reference to the undertaking given to the States by the Chairman on behalf of the Committee and of His Majesty's Government in Clause 5 of the same document. I think, My Lord, last year there was common agreement that Defence should be a reserved subject. As long as the Crown is responsible for the defence of India, it must determine how it discharges that responsibility and carries out its obligations in that connection. It is therefore for the Crown to judge and decide how far, consistently with its obligations to the country as a whole and to the Indian States, it can meet the various points of view put forward here. This, Lord Chancellor, is the view of the Indian States' Delegation, and the States have nothing more to say.

*External Relations.*

*Sir Tej Bahadur Sapru:* My Lord Chancellor, I shall remember the warning that you gave us this morning in regard to economy, and therefore I can promise you that I am not going to make any long speech on this question. I wish to make absolutely clear the position that I have taken up this year, and, if Your Lordship will permit me, I will state it more particularly because Lord Reading made a reference to my position. So far as the two subjects of Defence and External Affairs are concerned, I do not propose, and it was not my intention yesterday when I made my speech, to take up any position in any material degree different from that which I took last year. I recognise that under the scheme which we contemplated last year the two subjects of External Affairs and Defence were to be the special charge of the Crown. The only question therefore which remains when that is accepted is as to how that obligation is to be discharged. I have ventured to suggest only one change this year, and it is that so far as we on this side are concerned, we think—and the reason has been very well put by Mr. Sastri just now—that in order to facilitate an early passage from the reservation of the Crown to the responsibility of the Legislature, it is desirable that during the period of transition the Member in charge of Defence shall be an Indian.

But as regards the ultimate responsibility in respect to Defence, as regards the responsibility of this Minister to any authority, our position remains unaffected, namely—let me explain it as clearly as I am capable of doing—that the responsibility shall be the responsibility of the Crown, that the Army Member shall not be responsible to the Legislature during the period of transition, but shall be responsible to the Crown.

Now, that is exactly the position that I take with regard to External Affairs. So far as External Affairs are concerned, the present constitutional position is that the Government of India Act deals with questions of a political character or foreign character in three sections of the Statute.

I will first of all invite Your Lordship's attention to Section 44 of the Government of India Act. It reads as follows:—

“(1) The Governor-General in Council may not, without the express order of the Secretary of State in Council, in any case (except where hostilities have been actually commenced, or preparations for the commencement of hostilities have been actually made, against the British Government in India or against any Prince or State dependent thereon or against any Prince or State whose territories His Majesty is bound by any subsisting treaty to defend or guarantee), either declare war or commence hostilities or enter into any treaty for making war against any Prince or State in India, or enter into any treaty for guaranteeing the possessions of any such Prince or State.”

I pause there. So far as the powers contemplated by Section 44 (1) are concerned, I contemplate that during the period of transition, when Defence shall be the charge of the Crown, these powers shall continue to belong to the Governor-General.

I come now to the next sub-Section:—

“(2) In any such excepted case the Governor-General in Council may not declare war, or commence hostilities, or enter into any treaty for making war, against any other Prince or State than such as is actually committing hostilities or making preparations as aforesaid, and may not make any treaty for guaranteeing the possessions of any Prince or State except on the consideration of that Prince or State actually engaging to assist His Majesty against such hostilities commenced or preparations made as aforesaid.”

Sub-Section (3) reads as follows:—

“When the Governor-General in Council commences any hostilities or makes any treaty, he shall forthwith communicate the same, with the reasons therefor, to the Secretary of State.”

The Secretary of State means really the Crown.

With regard to sub-Section (2), I propose to effect no changes of a substantial character, but it will be borne in mind that Section 44 deals with the question of war, hostilities, or treaties of a political character entered into by the Governor-General either with the Indian Princes or with any foreign States. It has nothing to do with that class of treaties which are known as commercial treaties or agreements. With regard to that matter I shall presently deal in a slightly different manner.

When we talk of External Affairs, what do we mean? In this connection I will invite Your Lordship's attention to a passage from the Simon Commission Report, Vol. I, page 173. At the bottom of the page there is a description of this subject given and of the machinery which is now working, and if I may respectfully say so this is perfectly correct. So runs the Report:—

“The Viceroy himself holds the portfolio of the Foreign and Political Department. There is a Secretary in charge of each of the two branches, who holds the rank of Secretary to Government, and sits as a nominated official in one or other House of the Central Legislature. The Foreign branch conducts external affairs and relations with frontier tribes; the Political branch has charge of relations with the Indian States; and its organisation has been already described in an earlier chapter.”

So far as the Political branch is concerned, generally speaking it is true to say that it is in charge of matters relating to the Indian States. I venture to think that as the Federal Constitution develops—and we are proceeding on the basis of a Federal



Constitution for the purposes of argument—there is a good deal which is now done by the Political Department of the Government of India which will automatically pass to the jurisdiction of the Federal Legislature, but there will still continue to be a residuum of subjects coming within the general expression of paramountcy for which you will have to make provision. Now, so far as that question is concerned, we on this side are not directly interested in that matter; that is a matter really on which Their Highnesses and their Ministers are entitled to speak with authority, and I will, therefore, not take up the time of this Committee unnecessarily. I imagine that for many years to come, or at any rate for some time to come, matters of paramountcy which will be outside the scope of the Federal Legislature and the Federal Government will continue to occupy the attention of the Governor-General or of the Viceroy. What exactly will be the machinery which the Viceroy will adopt, either in consultation with Their Highnesses or independently, is a matter for the consideration of His Majesty's Government and of Their Highnesses. I venture to express no opinion on that part of the case.

I pass on then to what is known as the Foreign Department of the Government of India. As regards that, I shall invite Your Lordship's attention particularly to a paragraph in the Government of India Despatch. I refer to paragraph 197 on page 173 of the printed Despatch of the Government of India which came to England last year. The position is very accurately described there, and I venture to read it to the Committee. They say there:—

“ The existing position has been described in the memorandum which we submitted to the Indian Statutory Commission on the status and position of India in the British Empire and in the India Office memorandum on the international status of India. It is beyond doubt that there has so far been no delegation of authority to the Government of India in regard to external matters. As regards commercial agreements with foreign countries she has not the power which the Dominions have to enter into direct negotiations. The Government of India Act restricts the power of the Governor-General in Council to make political treaties and forbids the Indian Legislature, without the previous sanction of the Governor-General, to legislate regarding the relations of Government with foreign Princes or States. We do not contemplate that in present circumstances the Government of India could have a decisive concern with those foreign relations which closely overlie the right to make war and peace. On first-class questions of foreign and Imperial policy independent action by India is not yet within the realm of practical politics. India is indeed more continuously and practically concerned with foreign policy particularly in the Middle East than any of the self-governing Dominions.”

Now comes an important sentence:—

“ But whatever may be the degree of consultation with the Government of India, and whatever the agency functions which that Government may perform, the decisions must still remain with His Majesty’s Government. Nevertheless, there is a large range of external relations which may conveniently be so classed in distinction from foreign affairs, and in which we see scope for an increasing recognition of the individuality of India among the nations of the world.”

This last sentence I very strongly support, and I do suggest that if we develop the line of thought contained in this section it should not be beyond the range of possibility—indeed, it is quite feasible and practicable—that a good deal of the work which passes through the hands of the Foreign Department could certainly be transferred to popular control.

For instance, in the very paragraph from which I have just been reading they go on to say:—

“ It may well be that if the purposes of Parliament are defined, as we propose, the Government of India may enjoy considerable liberty in matters such as commercial treaties, and the treatment of Indians overseas.”

I will further multiply that: so far as the appointment of commercial agents or trade agents or agents of that class is concerned, there is no reason why they should not be within the control of the Indian Legislature. Similarly, Indian opinion is extremely sensitive with regard to the question of the treatment of Indians overseas. I remember very well—and Lord Reading will probably bear me out—that during his Viceroyalty the question arose as to how the Government of India should deal with the situation affecting Indians in South Africa at that time, and I remember also that it was then for the first time that the Government of India were authorised by the Secretary of State to enter into direct communication with the Government of South Africa.

Now, luckily for us, whatever may be our complaints or grievances against the Government of India, I feel very strongly that so far as the question of Indians overseas is concerned the sentiment of the Government of India has been completely identified with that of its Indian subjects during the last ten years. I think, however, that under the new status which India will acquire under the new constitution it should not be left as a matter of grace to the Government of India, but it should be a part of the constitutional provision that so far as India’s responsibility for protecting her nationals across the seas is concerned, that shall be discharged by the Federal Government on behalf of its own nationals and by dealing directly with the Dominions for the protection of its own nationals.

*Chairman* : I am sorry to interrupt you, but can you just give me a date there? Was it in 1927 that Mr. Sastri was appointed the first Agent-General?

*Sir Tej Bahadur Sapru* : Mr. Sastri will be able to tell you.

*Mr. Sastri* : Yes, in 1927.

*Chairman* : Thank you; that is the date I want.

*Sir Tej Bahadur Sapru* : Further on, the same paragraph proceeds:—

“ We make no precise proposals in this regard for, whether our relations be with countries within or outside the Empire, we consider that the functions of the Government of India must develop by agreement and convention rather than by the enactment of constitutional provision.”

Now, it is only with reference to this sentence that I should like to say that the position, to my mind, is not absolutely clear. I do suggest that howsoever much we may leave to the development of the constitutional position by agreement and by convention, we should make it clear that it shall be within the range and scope of the future Government of India to send its agent across the seas for commercial purposes and to enter into commercial agreements and treaties which its government thinks are best suited to the interests of India, and to take all such other steps as may be necessary on behalf of and for the benefit and protection of its nationals who are in different parts of the British Empire.

Then, My Lord, it says that it is by the growth of understanding and convention and not by provisions of positive laws that the Dominions have attained their present position. Well, putting it generally, this may be an accurate statement, but examined very closely in the light of the positive constitutions of the Dominions, I venture to doubt whether this sentence represents the legal and constitutional position correctly.

Therefore my suggestion is that so far as the Foreign Department of the Government of India is concerned the matters within its charge and control will have to be carefully examined and classified. So far as matters relating to peace and war and treaties of a political character either with Indian Princes or with foreign potentates or foreign States are concerned, I do say that they should belong exclusively to the Governor-General during the period of transition, and I impose no restriction upon the power of the Governor-General to select his own Agent or his own Minister for the discharge of those obligations. But as regards other matters which are treated generally as Foreign, but which really affect the national or commercial life, I say they should be within the scope of the Legislature.

My Lord, there is only one thing more that I will say, then I will conclude. May I invite Your Lordship's attention to another provision of the Government of India Act to show what exactly is

the position. If Your Lordship will turn to Section 67 (2), it says:—

“ It shall not be lawful, without the previous sanction of the Governor-General, to introduce at any meeting of either Chamber of the Indian Legislature any measure affecting . . . . .

(d) The relations of the Government with foreign Princes or States.”

I venture to think that during the period of transition, when the Governor-General as representing the Crown will be responsible, this Section or something to that effect will have to stand.

Then I come to Section 67A (3):—

“ The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either Chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs.”

Then you come to sub-Section (v) (b) “ political.”

This again will have to be very carefully examined and dissected and the content of the word “ political ” will have to be classified under two groups. Some of them will have to be outside the jurisdiction of the Legislature, while others will remain within the jurisdiction of the Legislature. These are the important Sections of the Government of India Act which bear on this matter. My Lord, I therefore say that that is the position that we on this side take.

Now may I in this connection invite Your Lordship's attention to paragraphs 11 and 12 of the final Report of the Round Table Conference. Your Lordship was pleased to refer to paragraph 11 this morning, and particularly to the safeguards during the period of transition which are summed up there. First of all it says:—

“ The Governor-General shall be responsible for Defence and External Relations (including relations with the Indian States outside the Federal sphere).”

I do say that I stand by it and affirm it.

Then, secondly, it is stated:—

“ In certain situations, hereafter specified, which may arise outside the sphere of those subjects, the Governor-General must be at liberty to act on his own responsibility, and must be given the powers necessary to implement his decisions.”

I also stand by that.

Then paragraph 12 goes on—and I particularly invite the attention of Lord Reading to it and ask him to consider whether he

thinks that in substance I have departed from the recommendations of it, or whether it is not the fact that the recommendation made in this paragraph has yet to be considered—as follows:—

“It was generally agreed that the presence of a person occupying the position of a Minister would be necessary to express the views of the Governor-General on Defence matters in the Legislature, since these will impinge upon strictly federal matters.”

I do not take exception to that sentence. It continues:—

“The same is true of External Relations, but there was not an equal measure of agreement with regard to the appointment of a person to represent the Viceroy in this latter subject.”

It is open to you to have a separate Member for External Affairs or to place External Affairs in charge of some other single Member. Then the paragraph proceeds:—

“It is clear, however, that the Governor-General must be at liberty to select as his representatives in the reserved sphere any persons whom he may himself choose as best fitted for the purpose, and that on appointment they would, if holding Ministerial portfolios, acquire the right, like other Ministers, of audience in either Chamber of the Legislature.”

I also stand by that. I am imposing no restriction upon the Governor-General except in one respect with regard to the Defence portfolio. He may select an Indian non-official Member of the Legislature in order to give him a chance of acquiring inside knowledge so that the passage of responsibility may be facilitated and expedited. Otherwise, so far as the substance of the machinery and procedure provided is concerned, I have made absolutely no change.

The paragraph continues:—

“The suggestion was pressed that any persons so appointed should be regarded as ordinary Members of the Council of Ministers, notwithstanding that they would be responsible to the Governor-General and not to the Legislature, and that they should be regarded as liable to dismissal (though they would remain eligible for re-appointment by the Governor-General) with the rest of their colleagues.”

May I remind you that the reservation made by me last year received a considerable measure of support from Lord Reading, who said, when it had been criticised by another member as ridiculous, that after having given the matter very careful consideration, he had come to the conclusion that the scheme that I suggested was by no means unworkable, and in fact he supported it.

Paragraph 12 proceeds to say—and this is the passage which requires consideration:—

“ It is difficult, however, to see how this position could be reconciled with the principle of the collective responsibility of Ministers, and the sub-Committee find themselves unable to come to any definite conclusions on the matter, though they are of opinion that it merits much more careful examination than they have, in the time at their disposal, been able to give to it.”

*Mr. Gavin Jones :* Do I understand that Sir Tej Bahadur Sapru would agree that the Minister for Foreign Affairs shall be responsible to the Governor-General both for policy and administration?

*Sir Tej Bahadur Sapru :* Yes, that was my meaning.

*Mr. Gavin Jones :* What about the Army? Do you agree to that too?

*Sir Tej Bahadur Sapru :* Yes, that the Army Member shall be responsible to the Governor-General and not to the Legislature. The Legislature shall not be at liberty to dismiss the Member.

I stand by the reservation I made last year, namely, that we must establish the principle of collective responsibility in the Federal Legislature, that so far as the subjects outside go, the Army Member should stand also with the rest of the Council, but that with regard to matters which are peculiarly within his jurisdiction, he shall be responsible to the Governor-General, to the Governor-General alone, and not to the Legislature.

It was said in criticism of my proposal last year, and I believe it was Mr. Sastri who said it, that it was not right and fair that this poor, innocent Army Member should suffer for the fault of any other Minister. My answer to that is that that happens every day in the case of collective responsibility. The only anomaly is that the Army Member shall be appointed by, and shall be dismissible by, the Governor-General, but that is inevitable if you want really to have Ministers and Councils representing these portfolios, and not secretaries or other officials. We have got to put up with that anomaly during the period of transition until the position is regularised.

I have nothing more to say.

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*Sir Muhammad Shaif :* Sir Tej Bahadur Sapru spoke of collective responsibility just now. Does he mean that the Minister in charge of Defence and Foreign and Political Affairs, although he may be responsible both for policy and administration to the Governor-General and not to the Legislative Council, yet will have collective responsibility along with the other members of the Cabinet in relation to these matters? Does he mean that?

*Sir Tej Bahadur Sapru :* In relation to other subjects. That is the position that I took last year, and that is the position from

which you differed. Unfortunately it so happens that I have not changed my opinion.

*Sir Muhammad Shafi* : That is not a clear answer to my question ; but still, I am satisfied with it.

*Chairman* : Would you mind repeating your question ? Then I shall understand it.

*Sir Muhammad Shafi* : My question, Lord Chancellor, is this. Does my friend, Sir Tej Bahadur Sapru, mean that although the Minister in charge of Defence and Foreign and Political Affairs will, with regard both to policy and administration, be responsible to the Governor-General and not to the Legislature, nevertheless there will be a collective responsibility of all the members of the Cabinet, including this Minister, to the Legislature ?

*Sir Tej Bahadur Sapru* : My answer to that is this. I contemplate that the Executive Council of Ministers of the future will take collective responsibility in its dealings with the Legislature, on the principle that they must present a united front to the Legislature. If a question arises relating to the Army or to Defence or to Foreign Affairs, on which the Legislature records an adverse vote against the Member in charge, then he shall not resign on that issue ; but inasmuch as he shall be equally entitled to take part in the general discussion on other matters than Defence and Foreign Affairs, if the Ministry of the day is thrown out by an adverse vote of the Legislature, he too shall go out, though it shall be open to the Viceroy the very next day when the Ministry is formed, or sometime afterwards when the Ministry is formed, to re-appoint that very individual.

*Mr. Jinnah* : There is collective responsibility.

*Sir Tej Bahadur Sapru* : Yes, Sir, during the period of transition.

*Mr. Iyengar* : Lord Chancellor, After the clear exposition of Sir Tej Bahadur Sapru with regard to his proposals on External Affairs, I shall content myself merely by elucidating my position with reference to what the Congress has asked for—namely, control over external affairs in a responsible Cabinet, and what the present position is.

In doing that, you will permit me to say that what we envisage as part of the full responsible constitution for India is that India should have the same powers and the same status and the same responsibility in respect of external affairs as are now in existence in the Dominions, and, therefore, I propose, with your permission, to examine what really is the present position and what we desire, in the pursuit in this full and equal Dominion Status, that we should have in our constitution. I shall also attempt to point out that, so far as external affairs are concerned, whatever may be the difficulty in regard to the control of the Army and the difficulties of immediately providing a national army, the question is a very much simpler one in regard to external affairs, and can give rise to no constitutional difficulties.

To-day India has already a certain international position of its own, in virtue of the fact that, under the terms of the Treaty of Versailles, it became an original Member of the League of Nations. India, again, is a member of the Imperial Conference, and has taken its place in the same manner as other countries at successive Imperial Conferences; and in both the Conferences of the League of Nations and of the Imperial Conference Delegates from both British India and the Indian States have represented India.

*Chairman* : I looked this point up last night, but for the moment I have forgotten it. What was the first Imperial Conference that an Indian attended?

*Sir Tej Bahadur Sapru* : It was in 1921.

*Chairman* : I was not sure whether it was in 1921.

*Sir Muhammad Shafi* : There was an Imperial War Cabinet in 1918.

*Sir Tej Bahadur Sapru* : That was different from the regular Imperial Conference.

*Mr. Iyengar* : The Imperial War Conference was another matter.

*Sir Muhammad Shafi* : The date should be 1919. Lord Sinha first came to the Imperial War Cabinet, and was then on the Imperial Conference. That was in 1919.

*Lord Reading* : He was on the Imperial War Cabinet in 1917.

*Sir Muhammad Shafi* : 1918 was the Imperial War Cabinet.

*Mr. Iyengar* : Then in both of these organisations of an international character India's position to-day is vitally affected by the fact that its Delegation does not speak for a Government that is free; they are subject to the instructions and control of a British Secretary of State in Downing Street.

*Mr. Joshi* : Not in Downing Street.

*Mr. Iyengar* : In Whitehall.

*Chairman* : You are only 20 yards out!

*Mr. Iyengar* : India to-day, therefore, does not exercise in her general international relations the rights which the self-governing Colonies have acquired. What I claim on behalf of the Congress is that India should be put, in regard to these matters, in the same position as the Dominions; and what that position is has, of course, been very clearly defined in the words of the Balfour Report. We want to be "an autonomous community within the British Empire, equal in status, in no way subordinate one to another in any aspect of our domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations." Therefore, the position in regard both to the Imperial Conference and to the meetings of the League of Nations that are held annually and all the ancillary conferences, is that India has obtained a certain status which for all purposes has been, so far as outsiders are concerned, that of equality with other members of the League or of these conferences. The



present position in so far as the legislative competence of the Indian Legislatures is concerned is that in all matters relating to foreign affairs or political affairs the previous sanction of the Governor-General is necessary before the Legislature passes any such enactment. Therefore, as to the juridical status of the Indian Government I do not see that it differs in any important respect from the juridical status occupied by the Dominions in respect of what may be called the legislative authority or provisions that may be necessary to implement international obligations.

As the Balfour Report points out, My Lord, the principle of equality and similarity appropriate to status do not universally extend to function and in particular in relation to foreign affairs, questions of diplomacy may also require flexible machinery, machinery which can from time to time be adapted to the changing circumstances of the world. What we here ask, My Lord, is that this flexible machinery should now be established as part and parcel of the grant of full responsible government to my country. It is no doubt true, as the Balfour Report itself points out, that all the Dominions have frankly recognised that in the sphere of foreign policy, as in the sphere of defence, the major share of responsibility rests now and must for some time continue to rest in His Majesty's Government of Great Britain; nevertheless practically all the Dominions are engaged to some extent and some to a considerable extent, in the conduct of foreign relations, particularly those with foreign countries on their borders.

Now, My Lord, if we proceed to examine from this standpoint what is the position and the rights which the Government of India as such has acquired in regard to treaties and other matters, I would invite Your Lordship's attention to a resolution which was adopted by the Imperial Conference in 1923, to which India was also a party. It reads as follows:—

“ This Conference recommends for the acceptance of the Governments of the Empire ”—

and I believe that includes the Government of India—

“ that the following procedure shall be observed in the negotiation, signature, and ratification of international agreements.”

And we find under the head “ negotiation ” the following clause:—

“ It is desirable that no treaty should be negotiated by any of the Governments of the Empire without due consideration of its possible effect on other parts of the Empire, or, if circumstances so demand, on the Empire as a whole.”

Then there are various provisions with reference to the manner in which these consultations should take place between various Governments before treaties are made or ratified, or before particular parts of the Empire require treaties to be made with their neighbouring countries. I do not want to detain the Committee with all those details. What I am now desiring to point out is that in regard to

all these matters I do not see that there is any inherent incapacity in an Indian Cabinet being able to deal with them, nor do I see that any of the resolutions of the Imperial Conference, or any of the other principles which have been established in connection with the proceedings of the League of Nations, would impose any disability upon the Indian Government as such, a Cabinet Government, from dealing with those questions. Therefore I desire that we should be placed in exactly the same position as that in which the Dominions are placed in respect of all these matters. There are, of course, many questions of diplomatic and foreign relations connected with what we may call high imperial policy or the larger foreign policy of the Empire in which I am sure India will follow the line of Great Britain in most matters; but there is absolutely no objection, there can be no objection, to our being placed in the same position as the Cabinets of other Dominions.

The other question concerns the relations which the future Indian Government should have with Indian Princes. That, I think, is a question which, in the scheme we contemplate, will soon become a matter of the past. If the Indian States as a body come into the Federation, then, as Sir Tej Bahadur Sapru properly pointed out, many of the matters which now come under the control of the Foreign and Political Department will necessarily come under the joint control of the Indian States and ourselves under a Federal Government. With regard to matters of paramountcy, in which the Indian States have insisted that they shall continue to be controlled by the Crown, I am prepared, speaking for myself—not on behalf of anybody else—that that method shall continue so long as the Princes desire; and so long as their coming into the Federation is made conditional upon it I am willing to leave it to their choice, but I hope that they will soon see that the best method of dealing with these questions is that they should come unreservedly into the Federation.

I find, in respect of other international matters—matters, for instance, with which the League of Nations is concerned—that India already exercises a good deal of individuality and independent status as do other Dominions. I have here before me a number of instances in which the Indian representatives at the League of Nations took an independent line—for example, at the Washington Labour Conference in 1919, at the General Maritime Conference in 1920, at the International Labour Conference in 1921, and also in respect of the Barcelona Transit Convention, the Convention for the Suppression of Traffic in Women and Children in 1921, and in other instances.

*Chairman* : I want to ask this question, Mr. Iyengar. I do not know whether you have had time to give thought to it. How far, in your opinion, might the economic and other relations of India with the outside world affect their political relations?

*Mr. Iyengar* : I am afraid I have not thought sufficiently about that subject to give an opinion on it at the moment. I might also mention that in the First Committee of the First Assembly of the

League of Nations in 1920, India and Australia voted in a minority as against Great Britain and other Dominions on the method of election of the non-permanent members of the League Council. At the League of Nations, particularly in matters respecting labour questions, the Indian representatives have been allowed by Whitehall the freedom and independence of action which clearly shows that there is absolutely no difficulty in investing powers in such matters as arise out of League of Nations issues in a responsible Cabinet.

My friend, Sir Tej Bahadur Sapru, has also pointed out that it will be necessary in the constitution that any responsibility with regard to commercial treaties or the appointment of trade commissioners and the like will be the responsibility of the Indian Minister responsible to the Legislature, who should be in a position to carry forward the policies which are essential for the National Government.

If that is so we are left only with the larger questions of foreign policy, say of making peace or war, and of our relations with the neighbouring States, on which the necessity for continuing the control of these matters in the hands of His Majesty's Government or the Crown is sought to be insisted on. So far as that is concerned, I am clear that even on those matters I cannot see where the special advantage lies in those matters being in the special care of the Government's officers in Whitehall rather than in the hands of His Majesty's Cabinet in India, if I may say so. The Governor-General, of course, will be in charge of foreign and political affairs, but he has got to be advised by somebody, and I think it would be all to his advantage if that advice was given, especially in regard to foreign affairs, by a gentleman who is a responsible member of a responsible Cabinet in India.

I do not want to enlarge on this matter, My Lord, but I feel——

*Chairman* : What is your attitude towards Section 44 of the Government of India Act in those circumstances? Do you accept Section 44, as Sir Tej Bahadur Sapru does, or do you say you do not accept Section 44?

*Mr. Iyengar* : No, Sir, I do not accept Section 44, for this reason. Either this power is going to be in the hands of the Governor-General, or it is going to be in the hands of the Governor-General in Council. I take the words "Governor-General in Council" to mean the Cabinet. The words "Governor-General" mean the Governor-General independent of Cabinet. Now, this Section not only imposes a restriction on the Governor-General in Council, but it also imposes the authority of the Secretary of State in Council for certain matters. What I am saying is that we are now up against the domination of Whitehall, and if that is removed all that I say is that our position in regard to the control of foreign policy shall be the same as that which His Majesty's Government may exercise in respect of foreign policy relating to the Dominions. I do not see why it becomes particularly necessary that that control

should be specially tightened by the maintenance of a special agency in Whitehall for Indian affairs only, and I therefore think it is one thing to say that the Governor-General shall be advised by somebody who is not responsible to the Legislature in respect of matters of foreign policy; it is another thing to say that the Secretary of State in Council shall from London dictate to the Governor-General in India what should be the policy.

*Sir Samuel Hoare* : And do you not think, Mr. Iyengar, that the question of defence is bound to react in the transitional period on the question of foreign policy?

*Mr. Iyengar* : Yes, certainly.

*Sir Samuel Hoare* : You see, the practical difficulty is this. It is admitted, anyhow by a great many members of the Committee, that in the transitional period defence has to be a reserved subject. It does appear to me, as a question of practical politics, very difficult to have foreign affairs a responsible portfolio with defence still a reserved subject. It seems to me that the two react very much together. I would have suggested for your consideration that probably the line with foreign affairs is the line that has actually been drawn in practice in past English history—namely, the powers that appear to be very formidable, and they would be very formidable if they were exercised rigidly by Whitehall gradually falling into desuetude, and probably you would find that gradually in the transitional period, although under the letter of the law full powers might remain in Whitehall for a minute direction of Indian foreign policy, if things were working well those powers would gradually fall into desuetude. That, I would suggest, has been generally the history of government in many parts of the British Empire, and it may well be the line of least resistance in dealing with what is a very difficult constitutional problem.

*Mr. Iyengar* : I entirely agree, My Lord, that defence and foreign policy go together. We have claimed that defence should be put under the control of the Legislature, and if the two go together it would be of advantage to have foreign affairs under the control of the Legislature rather than outside its control.

What I am referring to is this. After all, foreign policy is the special preserve of the Crown even in England, and the technical part of the responsibility of the Crown to declare war or peace has always been controlled by the actual responsibility of His Majesty's Government to Parliament. Similarly, I have just read a passage in the Balfour Committee's Report to show that even in the Dominions, in respect of what may be called the major issues of foreign policy, the Dominions will for a long time have to leave to His Majesty's Government here the conduct of those important questions of foreign policy. What I am saying, however, is that where the Colony or the Dominion finds its interests directly affected and wants to have a voice in the matter, it is far better that that function should be discharged by a Minister responsible to the Legislature who will be in a position to implement all those obliga-

tions which may be undertaken as a result of the foreign policy which may be adopted.

*Chairman* : I follow. Thank you, Mr. Iyengar.

*Mr. Wedgwood Benn* : I should like, if I may, to make three observations of a practical kind. In the first place, I assume that so far as a tariff is concerned in India—this is really relevant in a way—the Government's view would be that the tariff will pass under the control of a responsible Commerce Minister. The working of the Tariff Autonomy Convention, however honourably it may have been carried out in this country, does present difficulties, and no doubt both from the Indian and from the British points of view the appearance of a responsible Commerce Minister in India would be a great advantage.

Germane to that comes the question of commercial agreements, and with regard to that subject I will make only this observation, namely, that the situation has entirely changed by the alteration in policy in this country. It might have been a different matter for a government which used no tariffs to control the commercial agreements of India, but it would be another matter altogether if this country adopts a tariff policy which is intended to protect a United Kingdom interest, and also claims the right to make commercial agreements for India on her behalf as well. It would lay them under the suspicion, undoubtedly, of making commercial agreements in such a way as to favour their own tariff policy.

The third point I wish to make is this. I consider from practical experience that it would be a great advantage if the interests of Indians overseas could be handed over to a responsible Indian Minister. It is a heavy charge, as I think Sir Samuel Hoare will agree, that now lies on the shoulders of any Secretary of State or on the Government of India, who whole-heartedly champion the cause of overseas Indians. It is a very heavy responsibility, and it would be a lightening of that burden as well as an advantage to India if a responsible Minister in India could be created to take charge of the interests of expatriated Indians. I make those three observations, which I believe to be entirely in line with Government policy. There may be difficulties I have overlooked, but I make those general observations because I think they represent the right course to follow.

*Sir Samuel Hoare* : I do not at all admit the second of Mr. Wedgwood Benn's contentions; it does not seem to me that the economic policy of this country has anything at all to do with the way in which we should deal with Indian questions. We have shown our *bonâ fides* in the past by the way we have carried out the Fiscal Autonomy Convention, and equally we shall show our *bonâ fides* towards India whatever may be our fiscal policy here.

*Mr. Wedgwood Benn* : My point is that if you have a tariff policy in this country and use it as a weapon of negotiation with other countries, it will be difficult to differentiate your interest in that respect from the manipulations of a tariff in India which is

intended to be solely in the Indian interest. The position is entirely altered if a system of tariffs is adopted in this country.

*Sir Samuel Hoare* : I do not want to enter into a discussion on tariffs with Mr. Wedgwood Benn, and I would only say that I do not agree with my Right Honourable friend's point of view.

*(The Committee adjourned at 3-40 p.m.)*

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PROCEEDINGS OF THE FORTY-EIGHT MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON WEDNESDAY, 18TH NOVEMBER, 1931, AT 11 A.M.

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*The Inclusion of Labour in the Schedule of Federal Subjects and the Ratification of International Labour Conventions.*

*Mr. Joshi* : I thank you, Lord Chancellor, for giving me this opportunity of placing before this Committee the subject of Labour. I propose to raise two questions, My Lord. The first question is that the Federal Legislature should be empowered to deal with Labour questions, and the second question with which I propose to deal is that the Federal Government and the Federal Legislature should also be empowered to deal with the question of the ratification of International Labour Conventions. These subjects were not dealt with—at least adequately—by the last Session of the Federal Structure sub-Committee.

*Chairman* : I am very sorry, Mr. Joshi, but I was thinking of something else for the moment. Would you just repeat those two questions quite briefly, because I am most anxious to follow you?

*Mr. Joshi* : I propose first to deal with the question of the Federal Legislature being empowered to deal with Labour questions, and secondly, the question that the Federal Government and the Federal Legislature should also be empowered to deal with questions arising out of the ratification of International Labour Conventions. These questions were not adequately dealt with last year and in the early part of this year when the first Round Table Conference met. The principles of the question were indirectly, in my judgment, discussed when we discussed the question of Customs; and the principle of the second question was partly discussed yesterday by Sir Tej Sapru when he argued the question of External Relations as regards economic matters.

My Lord Chancellor, in the Report of the Federal Structure sub-Committee presented at the last Session, Labour questions such as factories, the settlement of Labour disputes, and welfare, as given on page 287, have been made Provincial subjects subject to Central legislation; but the Committee also has suggested that the Provincial Legislatures should have concurrent powers of legislation, the previous sanction of the Governor-General not being required in the case of Provincial legislation. This is in the list of Provincial subjects—List C, Item 26. This is what has been proposed by the Federal Structure sub-Committee

In my judgment, Lord Chancellor, the best arrangement will be that both the Federal Legislatures and the Provincial Legislatures should have power to deal with Labour questions.

They should have power to legislate on Labour matters and also to administer this legislation. In the case of Provincial legislation it will, of course, be administered by Provincial Legislatures and Provincial Governments. In the case of federal legislation it may be, according to the nature of the legislation, administered by the Provinces and other constituent Units of the Federation, or it may be administered by the Federal Government itself.

The defects of the arrangement proposed by the Federal Structure sub-Committee are two. In the first place they do not enable the Federal Legislature to pass legislation on Labour questions. I shall deal with this a little later on. The second defect is that if you leave Labour legislation to the Centre and leave the administration to the Provinces, there is a likelihood of difficulties arising, especially as regards the financial matters. The Central Legislature may pass legislation and expect the Provincial Governments and Provincial Legislatures to spend money. Naturally there will be difficulties when one Legislature passes legislation and expects the other Legislature to spend the money.

There may be other difficulties also, because we have among the federal subjects such subjects as Railways, Port Trusts and Shipping. The administration of Labour laws as regards these will also be a difficulty. I shall deal with those difficulties a little later on. But I feel that if you leave the administration to Provinces and the legislation to Central, there is bound to be a difficulty, especially a difficulty as regards finances. The financial difficulty in my judgment to some extent would be overcome by giving power to the Federal Government and the Federal Legislature to spend money on the legislation which they would pass, even though the administration may be Provincial. According to the present Government of India Act the Government of India is not able to spend money on those subjects which are Provincial, although the legislation is Central. This has created some difficulty even under the present constitution, and the difficulty may be increased unless we empower the Federal Government to spend money on Labour questions. Especially on those questions on which the Federal or the Central Legislature legislates there will be difficulties.

At this stage, Lord Chancellor, I do not propose to disturb the whole arrangement proposed by the Federal Structure sub-Committee. They may keep the administration Provincial, but they will have to give power to the Central or the Federal Government to spend money on those matters on which they would legislate. This would to a great extent obviate the difficulties that may be caused by the Central Legislature and the Federal Legislature legislating and asking the Provinces and the States to administer the legislation.

Lord Chancellor, I shall now deal with the second defect of the present arrangement, namely, that Labour questions should be within the purview of the Federal Legislature. My reasons for proposing that Labour legislation should be federal in the sense that the Provincial Legislatures would have also power, while the Federal Legislature would also have a similar power to legislate, are these. When I say that Labour should be made a federal subject, I do not mean that the power of the States and of the Provinces to legislate and to administer Labour matters should be taken away. The powers should be concurrent. The reason, Lord Chancellor, is that Labour legislation by its very nature must be federal. When we make Customs and Tariffs federal, the principle is the same.

If you allow the different constituent Units of the Federation to impose tariffs or customs amongst themselves and against each other, you give protection to industries in one part of the Federation against those in another; but the same kind of protection is indirectly given to industries in one part of the Federation by allowing that part to have no legislation on Labour matters. I do not suggest that Labour legislation necessarily means an increased cost of production, but also I do not deny that in some cases Labour legislation will mean increased cost of production; and, if the cost of production in one part of the Federation is increased on account of Labour legislation, then to that extent the industries in that part of the Federation where there is no Labour legislation will get protection against the other part.

This is a principle which can be easily understood, and we accepted this principle when we made Customs and Tariffs a federal subject. We also accepted this principle when we discussed the question of Federal Finance, inasmuch as we accepted the principle that one part of the Federation should not create trade barriers against the other parts of the Federation. We have therefore accepted this principle. It was on account of the same principle that the necessity was felt for the creation of the International Labour Organisation. The principle is the same, namely, that Labour legislation in one part of the country, or even in one part of the world, cannot progress beyond a certain limit unless the other parts are also willing to make progress.

The difficulties are created even to-day, and we are quite sure that if Labour legislation remains on different standards in the Indian States from British India, there is a danger and a likelihood of industries passing from one part of the country to the other.

Moreover, Lord Chancellor, we have made Ports, Shipping and Railways federal subjects. Now, there are a large number of workers engaged in ports, engaged in shipping and engaged on the railways. You cannot have Labour legislation which may be passed by the Central Legislature but administered provincially, which is not federal; if Labour legislation as applied to these workers is not federal, there are bound to be difficulties. You may have a railway line which passes through British India and also



through the territory of Indian States. If the hours of work on that railway are controlled in British India but not in the States, as soon as a driver enters the territory of an Indian State he will not be subject to any Labour legislation, and that is bound to create a difficulty. In the same way, if workers working in the Port of Bombay are protected by legislation, and if workers working in the Port of Bhavnagar are not protected, then the port charges in Bombay are likely to be higher than similar charges in Bhavnagar, and the port traffic is likely to pass through Bhavnagar. The same principle applies to seamen.

I therefore feel that the right solution, when we have such subjects as Railways, Shipping and Ports federal, is that the Federal Government should be empowered to deal with Labour legislation.

The Whitley Commission considered this question, and came to the conclusion that the right way of dealing with this question is to make the subject a federal one, although the Commission felt some difficulty in making a positive recommendation on account of the fact that the Commission was appointed to deal with conditions arising in British India alone. This is what they say at page 474 of the Whitley Commission's Report:—

“ So long as there exist side by side areas in which legislation is comparatively backward, there will be a handicap to progress in the rest of India. There are, therefore, good grounds for making labour legislation both a federal and a provincial subject.”

The Commission point out that there are other difficulties existing in the Punjab and in Rajputana, where there are States which have got no legislation and there are British territories which have got legislation on this subject. Lord Chancellor, if you do not make Labour legislation federal the protection given by the International Labour Organisation to Labour in India will also be to some extent reduced. At present India ratifies certain conventions of the International Labour Organisation, and to that extent workers in India get protection from these conventions, but if we have a federal constitution where the Federal Government will not have power to ratify conventions the protection will be less, because the constitution of the International Labour Organisation states this at Section 405 of the Peace Treaty, Sub-section (9):—

“ In the case of a federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in such case.”

The difference between a recommendation and a convention is that in the case of a convention, when a Government accepts it, the whole convention, both in letter and in spirit, is applicable to that

territory, but in the case of a recommendation the action is optional; it is left to the option of the Government; whatever action the Government think wise to take they may take; they are not bound to take any particular action in the case of a recommendation. In the case of a convention they must take action in accordance with the letter of the convention. So in the case of a federal constitution where there is no power in the Federal Government to ratify conventions and pass legislation to implement those conventions, the protection to the workers from the International Labour Organisation becomes less.

Now, this difficulty created by Labour legislation not being made federal has been felt in other federal countries. Take, for instance, Canada and the United States of America. In Canada the Labour legislation is a provincial subject, but there were many occasions, and especially now, under the present conditions of trade depression, on which the Governments have begun to feel difficulty.

In the first place, in the matter of trade disputes they passed a Canadian Act which applied to all Canada, because they felt that such an Act was absolutely necessary, and that there was the necessity of having one Act. Unfortunately, on account of the constitutional difficulties, that Act, although it remained on the Statute Book for many years and was put into practice for many years, has now been declared invalid.

Moreover, the Canadian Government also thought it necessary to have one legislation for Health Insurance. They could not pass one legislation for the whole of Canada, so they had to allow the Provincial Governments to pass laws on health insurance. The Provincial Governments could not finance the Health Insurance Act. Therefore the Federal Government contributes money to the Provincial Governments which pass legislation on health insurance; with the result that, although taxation is paid by all the Provinces in Canada, out of that taxation contributions are paid only to those States which pass legislation on health insurance. Therefore those Provinces which do not pass legislation on health insurance pay taxes to the Federal Government but do not get the benefit of them.

At present, on account of the unemployment there, the Federal Government of Canada is considering ways and means of getting over the difficulty of dealing with unemployment, because unemployment cannot be dealt with provincially; it must be dealt with by the National Government, and they have no power to do it at present.

Similarly, in the United States they find it difficult to pass certain Labour legislation, with the result that there is a danger felt by those States in the United States which have got such legislation that their industries will pass to other States. For instance, the Western States—what is called “New England”—which have got better legislation are complaining, and are asking their States to repeal the legislation in order that those States

should be able to compete with the industries in the Southern States, because industry is passing from New England to the Southern States of the United States.

Therefore both Canada and the United States have experienced this difficulty.

Canada has also experienced difficulties in the matter of the ratification of conventions. I stated in my speech in the Plenary Session last year that while India, which is industrially more backward than Canada, has ratified eleven conventions of the International Labour Office (because India had a unitary form of government) Canada and Australia have only ratified four conventions, and the only conventions which they have ratified concern maritime workers; they could not ratify conventions dealing with other workers at all.

Lord Chancellor, it is for these reasons that I feel that Labour legislation must be made federal.

There is one other thing I wish to say. On this point the States really need have no fear of British India being ranged against Indian India, because if you pass any piece of Labour legislation there will be no separate interests of British India against the States. The Legislature, if it is divided, will be divided according to the interests—the employers and those who sympathise with the employers, and Labour and those who sympathise with Labour. Therefore there is no danger of British India being ranged against the Indian States at all. Moreover, I have absolutely no doubt that in the case of Labour legislation being made federal, even the employers will agree with me that the legislation must be made a federal subject.

My Lord Chancellor, there is one question which arises as regards Labour being made a federal subject, and that is that on the whole there are many people who say that Provincial Councils will be more democratic than the Federal Legislature. I feel that a Provincial Council will be more democratic than the Federal Legislature, and may be more willing to pass legislation favouring Labour. But at the same time we have to remember that we are not preventing Provincial Legislatures from passing Labour legislation; we are giving them the power; but the experience of the world has shown that, although Provincial Legislatures may have the willingness and the desire to pass legislation, they will not be able to get over the difficulty caused by Labour legislation not being passed simultaneously.

It is on account of these reasons, Lord Chancellor, that I propose that the Federal Legislature should be empowered to pass legislation on Labour matters, and should be enabled to spend money on Labour subjects.

Now, Lord Chancellor, I shall turn to the other subject, namely, the ratification of international conventions. The present position is that India as a whole is a member of the League of Nations. But it is only British India that takes part in the conferences of

the International Labour Organisation. Although India as a whole is a member of the League of Nations, it is British India alone that ratifies the conventions. My Lord Chancellor, this procedure is an irregular one. British India alone cannot ratify conventions. If conventions of the International Labour Organisation are to be ratified, they must be ratified by the whole of India. But although this procedure is an irregular one, the irregularity is tolerated because it is neither the interest of the International Labour Organisation nor the interest of the workers in India to create a difficulty and prevent ratifications, a result which will happen if we insist upon the whole of India ratifying conventions. But this difficulty will be removed when we have a Federal Government and a Federal Legislature. We shall have a Government and a Legislature that will deal with the whole of India. The present difficulty caused by the Government of India not having power to deal with Labour matters as regards the Indian States will be removed when we have a Federal Legislature and a Federal Government that will be able to deal with Labour matters. Therefore the present anomaly of British India alone ratifying the conventions need not be continued.

Under the present constitution proposed by the Federal Structure sub-Committee there is no mention made as to which is the authority which is to ratify the conventions of the International Labour Organisation; but I take it that, as external matters are left to the Crown to be dealt with, the ratification of the international conventions will be a Crown subject. Lord Chancellor, this creates a difficulty. The Crown will have the power of ratifying the conventions passed at the International Labour Conference, but we are not leaving it to the Crown to legislate on Labour matters. The Crown cannot ratify conventions and not be able to implement these conventions—because the Crown will have no power to legislate on Labour matters. Therefore the proper authority for ratifying conventions is the Federal Government and the Federal Legislature, which should be empowered to pass legislation on Labour matters. Lord Chancellor, if India, on account of the present constitution as proposed, is unable to ratify the conventions of the International Labour Conference—which will happen if we leave the ratification in the hands of the Crown, which will have no power to legislate on Labour matters—India will very much lose its prestige in the international world. At present, especially in the International Labour Organisation, India has got some prestige as leading the Asiatic countries in the matter of Labour legislation; but if India is unable to ratify a convention, India will lose that prestige; and, not only that, but on account of India being unable to ratify conventions of the International Labour Organisation, both Japan and China will not ratify conventions of the International Labour Organisation.

Moreover, if we are unable to take an effective part in the International Labour Organisation, our political status to a great extent will suffer internationally, which is a result that none of my countrymen would like to produce. I therefore feel, Lord

Chancellor, that the ratification of international conventions should be a subject within the power of the Federal Government and of the Federal Legislature.

Lord Chancellor, I have now done, but before I close I wish to state what my exact proposal is. My proposal is, in the first place that the Provincial Legislatures should be empowered to legislate as well as to administer legislation on Labour questions. At the same time, the Federal Legislature should also have power to legislate on Labour matters, and the administration of the legislation should be left to the States and to the Provinces with one reservation, namely, that the Federal Government should have power to spend money on matters which are dealt with by the Federal Legislature.

My second proposal is that the ratification of international conventions should be a matter within the authority of the Federal Government and the Federal Legislature

*Chairman:* Thank you, Mr. Joshi. I should just like to make one or two remarks upon each of the points that you have raised. You have advanced your ideals, namely, that Labour legislation should be within the purview of the Federal Legislature. You have advanced not only the ideals, but the arguments which you said, quite rightly from your point of view, ought to induce that state of things to come to pass.

I suppose that anybody who was entrusted with the drafting of a federal constitution for India would start in this sort of way:—

“The Indian Federation to be established by Royal Proclamation, issued with the advice of the Privy Council, declaring the establishment of Federation on an appointed day.

(1) The Federation to consist of:—

(a) Specified Governors' Provinces in British India and specified Indian States being States which have agreed to enter the Federation and have ceded the necessary rights and powers to the Crown for the purposes of federation;

(b) Such Governors' Provinces as may be established hereafter and such other Indian States as may hereafter accede. The limits of the Provinces to be those existing at the date of the Act, but nothing in the Act to affect the position as at the date of the Act of any territories not within the limits of a Province which are administered with or as part of any Province under the Foreign Jurisdiction Act, 1890.”

You will see, Mr. Joshi, that federation depends upon consent, and it will have to be of the States which have agreed to enter the Federation and have ceded the necessary rights and powers to the Crown for the purposes of federation. Your argument is an admirable one, and no doubt on your way back to India you will take aside Sir Akbar Hydari and His Highness of Bhopal and press your arguments on them, and no doubt you will do so with

your usual skill; but that is how the matter stands with regard to that.

*Sir Akbar Hydari:* So far as Hyderabad is concerned, Mr. Joshi has in a great measure been speaking to the converted. Hyderabad is basing its legislation more or less on the lines of British India, and will continue to have it on those lines and on the lines which are dictated by sentiments of humanity; so that, so far as that is concerned, I think Mr. Joshi will not find very much difficulty in coming to some agreement with Hyderabad so as to safeguard the rights of Labour on purely humanitarian grounds.

*Chairman:* I am sure Mr. Joshi will receive that with great satisfaction.

The other point he raised is a very important one, and that is with regard to the ratification of these international Labour conventions. What I am going to say now is not my opinion at all; it is simply certain suggestions, some of which I indicated to Mr. Iyengar yesterday. I am simply going to read them out so that you may give thought to the matter. I do not want any opinion expressed now. It is a matter which has not been properly considered yet, and which cannot be properly considered yet, and therefore I am going to read these things out in order that you may have an opportunity, I will not say of agreeing with them, for I do not ask for agreement or disagreement, but so that you may consider them, because they are matters which have engaged our careful thought over here, and we are in a little difficulty about them.

This is on External Relations:—

“There is a theoretical difficulty in fixing the limits of the subject, since many external questions have their internal aspects, and *vice versa*. In practice, however, the difficulty will be much smaller than in theory. The reserved subject is broadly the political relations of India with other countries, including British relations with foreign countries, in so far as they are conducted by the agency of the Governor-General.”

Now here comes your point:—

“It is true that the economic and other relations of India with the outside world may affect political relations, and in so far as they may do so the Governor-General will have a special personal responsibility. In cases which have both a political and an economic or other aspect, policy will in practice possibly be decided by the Governor-General acting on his own responsibility subject to the control of His Majesty's Government, or on the advice of his Ministers, according as the political or the non-political aspect predominates, or will be the subject of agreement and compromise between the two sides of the Government. When there is no agreement as to which side is principally concerned the Governor-General's decision will be final. It

will therefore be unnecessary and undesirable to attempt by rules or instructions to define the extent of the reserved subjects or to enumerate its heads. The matter to be actually included in the portfolio of External Affairs will, of course, have to be settled later for the allocation of business, but even then it will be undesirable to define by hard and fast rules the extent to which they are or are not reserved. It seems impossible to make a satisfactory classification of political and economic, etc., questions in which both aspects are present and the one or the other aspect may preponderate. At different times a hard and fast classification, however meticulous, will almost certainly hamper administration on one side or the other."

That will appear on the note and I want you to be good enough to consider that, Mr. Joshi; it affects your class of case, if I may say so. We are getting down to grips with this subject now. No constitution will ever last, however cleverly you draw it up, unless people are agreeable to work it, and anybody—I was going to say any fool, but that is a silly thing to say—anybody can make a mess of any constitution if he wants to obstruct; and I think, therefore, the very best thing—and I submit it for your careful consideration—is this: you do not want to be hampered by too many rules in the future and you do not want to have too many regulations, but you will find that if you have any sort of general regulations, with the spirit of give-and-take, as things go on, and mutual agreement and compromise, you will be able to settle a very great number of things as they arise by mutual discussion and consent and compromise. Therefore do not at the present moment tie yourselves up with a tremendous amount of theoretical rules, which may be an awful curse to you when you come to try to settle the questions which arise day by day. You will find that as the provincial affairs and the federal affairs get into order the daily working of these things will enable you all to come to working agreements which will be far better than our laying down a thousand and one theoretical rules as to what is to happen in various contingencies which may never arise.

I have said all I have got to say. I do not want any comments, but I want you to be good enough, because you have raised two important points, to go back and consider those things.

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### *Defence and External Relations.*

*Sir Akbar Hydari:* Lord Chancellor, with regard to External Relations I should like to invite attention to this sentence in the Prime Minister's declaration, by which we stand. It is at page 81:—

“The connection of the States with the Federation will remain subject to the basic principle that in regard to all matters not ceded by them to the Federation their relations

will be with the Crown acting through the agency of the Viceroy."

As to Defence, His Highness the Ruler of Bhopal has read out a statement which represents the unanimous opinion of the Indian States Delegation. Whether there should be a Minister of Defence, whether he should be an Indian or a European or either, whether he should be from the elected members of the Legislature or nominated by the Viceroy—all these are questions which we desire to leave for decision by the Crown, to which we reserve full responsibility as long as Defence is a Crown subject; and in this connection I would invite again particular attention to paragraph 5 of the Defence sub-Committee's report.

*Chairman*: It is at page 62, if you would kindly read it out.

*Sir Akbar Hydari*: "A view was expressed that an addition should be made to these resolutions to the effect that the sub-Committee recognised that no action should be taken so as to prejudice in any way the power of the Crown to fulfil military obligations arising out of Treaties with particular Indian States." It was ruled, however, and accepted by the sub-Committee that such a specific declaration was unnecessary, the Chairman giving an undertaking that neither this sub-Committee nor any other Committee could in any way abrogate treaty obligations and engagements that were in operation.

As I say, I invite particular attention also to this portion of the Defence sub-Committee's Report. So far, however, as to his being a member of the Federal Cabinet is concerned, I, for one, speaking for myself alone, would not like to introduce an extraneous element and thereby destroy the unity of the Federal Cabinet by making him a member of that Cabinet. The educative and the liaison functions, which is one of the arguments for having such a member in the Federal Cabinet, can be performed in my opinion much better by an Advisory Council drawn from several groups representing several interests, and who would be in touch with the Commander-in-Chief or the Viceroy's Military Adviser, if such is appointed.

*Chairman*: Thank you very much, Sir Akbar; I am very much obliged to you for your help.

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#### *Amendment of the Third Report of the Federal Structure Committee.*

*Mr. Jinnah*: Lord Chancellor, you have forgotten me altogether, about that paragraph 14?

*Chairman*: No, I have not, Mr. Jinnah. I have got here your little note that you sent me yesterday, I will read it.

*Mr. Jinnah*: I do not want it to be locked up in your breast; I want it to be on record.



*Chairman*: I will unlock it now. This is the letter which I sent to you yesterday:—

“ My dear Jinnah, Will it suit you if I add at the end of paragraph 59 the words ‘ Mr. Jinnah and/or the Muslim Delegation are unable to give their assent to this paragraph ’?”

The mention of paragraph 59 was a mistake, of course. You quite rightly pointed out in your reply that it was paragraph 14 not paragraph 59, and you wrote:—

“ The Muslim Delegation are unable to give their assent to the paragraph as they think that no case for weightage has been made out.”

Now, what I am going to do is this; I am going to add that at the end of the paragraph, but the only thing I wish to ask you is this. In order to save expense, instead of having the whole thing printed with that addition, will you allow me to say it publicly at the Plenary meeting of the Conference, and then we can have it printed with any other alterations?

*Mr. Jinnah*: It is as you wish.

*Dr. Ambedkar*: I want to say that I agree with that statement of Mr. Jinnah.

*Chairman*: I will put you in too.

*Mr. Joshi*: I also agree.

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### *Commercial Discrimination.*

*Mr. Benthall*: The subject which I have the honour to begin is supposed to be a very controversial one, but I am not one of those who think that it is insoluble. I think the best service that I can do at the present juncture is to put forward the full views of our people, not as a college debate but because, if all the circumstances are fully taken into consideration, it is my belief that a greater measure of understanding can be reached than has been reached hitherto.

After all, the problem which is facing us in commercial discrimination is contained in paragraph 14 of the Minorities Report of last year, and it boils down to further discussion on the clause requiring that an appropriate convention based on reciprocity should be entered into for the purpose of regulating the commercial rights of the British mercantile community. As far as I am concerned, I am determined, if possible, to get a stage further both by public discussion and by private negotiation. What I feel is that if it is impossible for us to get a complete solution of our differences of opinion, we can at least be no worse off, as I am convinced from my conversations in private that there will be no going back on the spirit of last year's clause.

With your patience, therefore, I propose to deal with this subject rather fully, and I will deal with it quite frankly and will

keep nothing at the back of my mind. At the same time, I will try to put it in the least controversial and the most moderate way possible, and out of it I have great hopes that even at this eleventh hour we may get a good deal further.

I would ask my fellow Delegates for one moment to put themselves in our position. On the one hand, Indians are asking us not to stand out against a transfer of political power over commerce, and on the other hand a large volume of public opinion proclaims that if the power is transferred they intend to make use of it to our disadvantage. The leaders of British commercial opinion have in recent months made it quite clear on many occasions that they have no desire whatsoever to stand in the way of any legitimate aspirations of Indians or to impede India's constitutional advance on sound lines. We are just as anxious as anyone else for a successful outcome of this Conference, but it has been necessary for us, and still is necessary, to state that unless our rights are protected in the clearest and most unequivocal manner we must reserve our consent to the transfer of power, and that protection must be afforded in the Act itself; but let me add that if a solution can be found I feel quite confident that a great cloud will be cleared away between the two peoples, and it may lead to a happy solution of the whole problem.

There were two courses open to us to obtain the safeguard which we required before agreeing to the transfer of power. We could, of course, have gone to His Majesty's Government direct, and if we did so we should have gone with confidence of support in the fullest possible manner. We have not done that. The Round Table Conference was called to find the maximum possible measure of agreement on all the subjects which came before it, and in joining it we have come in that spirit, not to try and make but to solve difficulties, not to destroy but to try and build up.

In respect to this particular problem we have come to make an agreement to fill out clause 14 so that both sides may understand it more clearly.

Before going on with the details of the case, I should like to make one more point, slightly controversial. As I have indicated, we are not afraid of bringing a fair mind to this question, because we realise that if it is to reach a satisfactory issue our fellow Delegates must recognise that any settlement is fairly in the interests of India as well as of ourselves. As Sir Hubert Carr said at the last Conference: Our commercial rights are not for negotiation, but we are prepared to go as far as we can to meet Indian aspirations for the good of India, provided we are met halfway. But whilst we are prepared whole-heartedly to look at the interests of India as a whole, we are not much concerned with the interests of a few individual competitors who have shown that they seek to deprive us by legislative actions of rights which we have legitimately won by years of industry and integrity.

The problem divides itself in our minds into five sections. The first of these is the substance of the trading rights of the British.

subjects in India. The second is the methods by which Indian trade can be assured of a fair deal. The third refers to trade relations between Great Britain and India. The fourth relates to the method of introducing an agreed solution into the constitution. The fifth section concerns trading agreements between India and Burma, if Burma is separated, between Burma and Great Britain, between each individual State and Great Britain, and the internal problem between the States and Provinces of India. These last additional aspects do complicate the problem, and cannot in the long run be avoided. But once the first four points have been settled I feel confident that the rest will fall more easily into solution.

The first principle laid down at the Minorities Committee at the last sitting of the Conference was set forth as follows:—

“The principle is generally agreed that there should be no discrimination between rights of the British mercantile community, firms and companies trading in India and the rights of Indian-born subjects.”

Now that principle has been agreed, and it might be argued that there is no need to dwell further upon it; but this is the only opportunity I think that we shall have of stating our case, and I think it is necessary and will be very helpful if we put forward what is in our people's minds.

Whatever may be said to the contrary and however much detractors of our historical association with India may seek out instances where British traders have not done well for India, it must be acknowledged that India has reached its present stage largely owing to British capital. Many of us look forward to the day when India may follow in the footsteps of the United States, whose industrial and financial progress was originally built up on a foundation of British capital. India to-day ranks I believe as the fifth country in the world's trade, and she can take a still higher place if British and Indians can find a way of working together. Our first claim to recognition, therefore, is based upon our past service and our established rights which are part of the national economy. We are not demanding something new but the retention of something which we already have; and no one would willingly allow themselves to be deprived of something which they have justly earned and which they value very highly. I think you will agree with me that that is a fair claim.

The Government of India's Despatch of September, 1930, in Section 190 puts the case very fairly; it says:—

“Subject always to India's right to receive reciprocal treatment, citizens of any part of the Empire should be allowed to enter India freely, to engage freely in any trade, business, profession or calling, and when established in India to receive just treatment.”

That is just our claim. If we were to base our claim solely upon our past services and rights, we should, in justice, and in spite of

what anybody can say, have an unassailable claim to the protection which we ask for under the new constitution. But although that is in reality our strongest ground for claiming the application of the principle of no discrimination, there are other grounds which are equally powerful. What we ask we concede. The Indian subject of His Majesty or of a State can come to this country and, as a British subject, the law excludes him from nothing that is lawful to a European British subject. He is free as a British subject to come and go; he can exercise the vote on obtaining the necessary qualification; he can sit in Parliament; he can be eligible for both houses. He can carry on any trade or profession; no law of this country so far as I am aware excludes him from any benefit of trade. As a British subject he is entitled to the benefits of any Act which allows State aid to industry. In one recent Commission the Overseas Trade, Credit and Insurance Act of 1920 was quoted as embodying discrimination; but that discrimination was against foreigners; and no British subject, no British Indian subject is excluded from the benefit of that Act. All we ask, therefore, is reciprocity on the lines of the second part of the clause. So long as Great Britain does not discriminate, so long we claim India has no moral right to do so, and should demand no legal right.

Now it seems to me that if these two countries are to go hand in hand together in the future, there can be no principle more natural between the two nations than the principle of equity and reciprocity.

Mahatma Gandhi spent his early life fighting for this principle, and I feel quite sure that he has not changed his view. I think I am right in saying that Mr. Sastri and Sir Tej Bahadur Sapru at successive Imperial Conferences fought for this principle.

*Mr. Sastri:* But did not get it.

*Chairman:* He only said you fought for it. There is nothing controversial in that statement.

*Mr. Benthall:* The line which we have taken and propose to take represents the good relations which one would naturally expect to exist between two countries under the same Crown and bound together by common interests.

The above two arguments in favour of our claim are based on right and abstract justice, but there is another argument, another aspect which carries equal weight, and that is based on reason. It is not as if this question was a new subject; the whole matter has been thrashed out in a most thorough manner by various Committees in India.

The first to discuss the question was the Indian Fiscal Commission of 1921-22, and I should like to quote you a few sentences from Chapter XV of their Report to show that the presence of foreign capital in India was not considered by them detrimental to India's interests. On page 130 of the Indian edition, Section 289, there occurs the following passage:—

“If it were true that employment of foreign capital would merely benefit the foreign capitalist, and would not

benefit India, no one would hesitate to condemn the use of foreign capital, but, when the matter is really examined, there can be no doubt that, though the foreign capitalist may get his profit, the main advantage from the employment of foreign capital remains with the country in which it is employed. In the case of India this is particularly clear."

Further on, at page 134—these are just samples of many similar passages—there occurs the following:—

"If, however, legislation is enacted putting obstacles in the way of the employment of foreign capital, India's credit abroad will be injured and the British investor will also become shy. The result will be that India will not be able to obtain the money which she requires both for public and private purposes, or will only be able to obtain it at materially higher rates."

That is even more true to-day.

Two causes of the distrust of external capital, and therefore of our position in India, were raised and dealt with. The first was the allegation that the vested interests of external capital tend to be antagonistic to political progress. Whatever justification there may have been for this criticism in the past, there can be no justification to-day, nor can there be any possible argument at all under the proposed future constitution.

The second argument was that external capitalists took no trouble to train up Indians or to associate themselves with the country. The Report remarks, with regard to this, that there is a growing tendency, due to economic causes, for foreign capital to identify itself with the interests of India. I have no hesitation in saying that this process has been most marked in recent years, as anyone will admit who cares to make an impartial investigation of the recent business relations of British trade in India; and this is a process which must necessarily continue in the future. The thousands of shareholders and clients with whom we have to deal make it a prime necessity that we should associate ourselves with Indians in every possible way, and I may record my own experience that even in the height of the civil disobedience movement last year very little arose to disturb the good relations between ourselves and our friends, even in quarters where the most violent political pressure was brought to bear.

The process of Indianisation is bound to continue in the natural course of events, and will be accelerated under an Indian Government, but the attempt to hasten unduly the course of events would only react to the general detriment of India. If there is anything very clear to me, it is that the real future prosperity of India lies in joint enterprise of Europeans and Indians.

The Minority Report of the Indian Fiscal Commission, while anticipating that an Indian Government should, in any case where bounties are given, be entitled to exercise some control in the interests of India, also claimed that the right to establish any

industrial enterprise behind the tariff wall should be considered as a concession in itself, and they desired that any companies which established themselves in future behind the tariff wall should be required to comply with three conditions. Such companies should be incorporated and registered in India with rupee capital; there should be a reasonable proportion of Indian Directors on the board and reasonable facilities should be offered for the training of Indian apprentices. I would ask you particularly to remark those conditions.

As a result of the findings of this Commission a further Committee, known as the External Capital Committee, was appointed in 1924 to consider the question. The terms of reference were "to consider the question of the flow of capital into India from external sources." It was appointed for the specific purpose of clearing up the points left out by the Fiscal Commission. It issued a questionnaire dealing with the replacement of restrictions on and differentiation of external capital, and it reported towards the end of 1925:—

"This Committee confirmed that as a general principle the inflow of external capital is not only unobjectionable in itself but is a valuable factor in assisting the economic development of a country and in increasing its wealth and employment. . . . Ordinarily countries so far from attempting to discriminate against or to penalise the external capitalist do all they can to encourage the flow of capital."

They pointed out the advantage to be gained by encouraging external capital so far as internal capital was not forthcoming. They added that:—

"The proposition that preferential terms should be secured by Statute to the Indian investor is short-sighted and involves an economic fallacy. The interests of the Indian investor will best be served by giving him the widest freedom of choice as to the character of his investments and the most open market in which to sell them when he so desires."

Now I would quote from the Summary of Recommendations, Section III:—

"Though in certain circumstances the control of external capital may be necessary in the interests of India general measures discriminating against it or penalising it either by way of taxation or by way of control would, so far from assisting the development of these resources or fostering the interests of the Indian investor, be definitely injurious to both, as they would impede the growth of new industries and restrict the transferability and consequently the market value of the holdings of the Indian investor."

Section IV points out the desirability of undertaking a survey of the whole field of banking, the outcome of which has been the recent Banking Inquiry.

I would particularly draw your attention to sections V and VI which I will read to you in full, because they embody principles which are very much wrapped up in the further solution of Clause 14 of last year's Minority Report:—

“ V.—As regards the control of external capital, where the external capitalist is merely entitled to a stipulated rate of interest, and only acquires rights of control when there is default, as in the case of State and Municipal loans, bonds and debentures of companies, and bank loans, we do not consider any measures of control necessary, but in the case of Government and quasi-Government loans, the rate of interest should not be the sole consideration in placing such loans and, other things being equal, preference should be granted to the Indian investor.”

Conclusion VI reads as follows:—

“ Where investment carries with it the control of an undertaking, we consider it reasonable that when Government grants particular concessions to the industry of which that undertaking forms part it should exercise such control over the undertaking as will ensure that the benefits of the concession accrue primarily to the country.”

The next is important:—

“ (a) Where the concession is general, as in the case of a protective tariff (and this would include practically every industry in India, as a revenue tariff without a corresponding excise has a protective effect) it is impracticable ”—note the word “ impracticable ”—“ to effect any discrimination. No feasible suggestions for such discrimination have been suggested to us, nor have any occurred to us during our discussions.

(b) Where definite pecuniary assistance, such as a bounty, is granted to any particular undertaking, we consider that discrimination is feasible, and we agree with the Fiscal Commission and the Legislature that no such assistance should be granted to any company, firm or person not already engaged in that industry unless—

I. Reasonable facilities are granted for the training of Indians, and

II. In the case of a public company unless—

(i) It has been formed and registered under the Indian Companies Act, 1913.

(ii) It has a share capital the amount of which is expressed in the memorandum of association in rupees.

(iii) Such proportion of the Directors as Government may prescribe consists of Indians.

(c) Where a concession is granted to exploit a wasting asset, such as a mineral concession, no definite rules can be prescribed. It must be a question in each case whether it is better from a point of view of the national interest that a concession should be developed by external capital or left until indigenous capital may be prepared to develop it. Such concessions should only be granted to external capitalists when it is clearly in the national interest that they should be developed."

The note of dissent by Pandit Malaviya took up the same line as the minority Report of the Fiscal Commission and held that it was desirable that in the case of every new company which may be formed hereafter in India a reasonable proportion of the directors should be Indians, and also that at least half of the share capital should be reserved to Indian subscribers for a definite period of time. If after that period Indians had not subscribed their share the company should be free to acquire the remaining capital where it could.

The practical objections to Pandit Malaviya's proposals were dealt with in Sections 21—26 of the majority Report. I will not tire you by reading them in full, but they are summed up in the word "impracticable".

To-day the demands of Congress, as I understand it, are that 75 per cent. of the shares and 66 per cent. of the directors of any new company to be formed hereafter in India shall be Indian.

Let me make our position quite clear. There is a point beyond which we cannot go. We are prepared to align ourselves with the majority findings of this External Capital Committee specially appointed for the purpose, with one immaterial exception. The third clause of the External Capital Committee's Report lays it down that in the case of a public company "such proportion of the Directors as Government may prescribe (must) consist of Indians." We object to this instance of racial discrimination, but we are quite prepared to admit the same effect by altering this clause to that recently adopted in the Bengal State Aid to Industries Act where it was laid down recently that in such cases Government shall approve the composition of the Board. As the future Government will be Indian, they will naturally require such proportion of Indians in the directorate as they may think fit. The amendment does away, however, with the one objection that we have.

This brings us to our second heading.

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*(The Committee adjourned at 1-10 p.m. and resumed at 2-30 p.m.)*

*Mr. Benthall:* Lord Chancellor, I have just reached our second heading, the manner in which the Indian Government can assure individual Indian industrialists of a fair deal, especially in so-called key industries. The first question which faced us



was: what is meant by key industries. The British Safeguarding of Industries Act only recognises as key industries certain products, such as optical glass, ignition magnetos and wireless valves. These are not at present of much interest to India; but even in the case of these key industries British Indian subjects are not discriminated against in any way. It is true that in the League of Nations discussion on the treatment of foreigners certain other trades and industries were laid down as being fit subjects for discrimination; but I would point out immediately in unmistakable language that these cases apply to foreigners and do not apply to the relations of parties who are destined to be equal partners in a Commonwealth of Nations. As British subjects in India we have a right to claim treatment equal to what an Indian British subject gets in this country.

I do not think it is appreciated either in this country or in India what a large degree of control will pass to India if the constitution which we contemplate is brought into being. It is, I think, very important that both sides should realise and recognise the extent of the powers which are going to be transferred.

Let us examine the different ways in which a National Government can take care of industries of all sorts to see that they are administered in the interests of India. Nothing that we ask for will prohibit the Government of India from treating any of these industries as fit subjects for nationalisation or socialisation. Should the new Legislature desire to adopt a policy on these lines we are quite prepared to admit that the Legislature should be in this respect master in its own house; but we would ensure that existing rights—for example, those under leases or licenses—can only be abrogated or cut down on the terms that proper compensation is made to the holder.

Such a proposal merely embodies a principle recognised by all civilised communities, namely, that a man's property is not to be taken from him by the State without due compensation. Such a proposal applies to the benefit of Indians and non-Indians alike, and leaves the Indian Legislature free to develop its own policy on lines that seem to it best. There is nothing difficult in this.

A clause guaranteeing the right of property is in our opinion an essential feature of the new constitution. It is naturally with some diffidence that we put forward any suggestion before so many legal luminaries, but the sort of line which such a clause might take would be something like this:—

“The right of private property is recognised and guaranteed, and no person shall be deprived of such property except under due process of law, provided that property of all kinds may be expropriated for public purposes, subject to the payment of just compensation to be assessed by an independent tribunal.”

*Chairman:* Something like the French resolution of 1789.

*Mr. Benthall*: I am not familiar with that. My suggested clause should go on:—

“ . . . from the decision of such tribunal appeal may be taken to the Judicial Committee of the Privy Council under such regulations as may be prescribed by His Majesty in Council.”

Then, again, it will be open for the Indian Legislature to assist any industry by direct financial assistance, in which case the principles of the External Committee's Report would apply. There is a vast scope for development on these lines.

Another means of assisting indigenous concerns is by the granting of subsidies for performance of specific services such as the carrying of mails by air, sea, or land. Again, financial assistance may be given by way of loans at low rates of interest for similar purposes. That has been the subject of a good deal of discussion in our private conversations.

We have, of course, no objection to a reasonable policy of this sort provided that no discrimination is exercised on racial lines or against one or two companies fulfilling the same functions. Let me give an example of what I mean. Given equal efficiency and equal terms, and other conditions being equal—I will put it like this—it is not unlikely that the Executive would give a contract for the carriage of air mails between two towns to an Indian firm in preference to a non-Indian firm, or if two companies were making steel and one of them were making a particular type of steel, which the Government would wish to encourage, there would be no difficulty in giving financial assistance, say, in the form of an easy loan, for that particular purpose; but if a bounty were given it should be given to that particular steel, and it should be open to either company to claim the bounty if it provided the steel. We should, however, object in the strongest possible manner if the policy of giving bounties for specific purposes were stretched to the point of unfair *de facto* discrimination.

There is, of course, a complaint that big corporations may come into the country and form monopolies. If it is found that external capital is exercising an unhealthy monopoly, there is no reason why legislation on the lines of the Sherman and Clayton Acts in America should not be introduced, or the Commercial Trust Act in New Zealand, which deals with restraint of business and prohibits the giving of rebates with a view to exclusive dealing, selling goods at unreasonably high prices, attempts to control wholly or partially the demand or supply or price of goods in New Zealand.

Similarly, on these lines, to ensure a fair deal for small Indian companies the Government would be fully empowered to exercise control over maximum and minimum rates so as to ensure that a weak company would not be squeezed out by a strong company cutting rates unfairly. There are many precedents for such legislation in most countries.

Again, if in any trade an unfair system of rebates is established, it would be within the power of the Legislature, without discrimination, to deal with such a matter if it could be proved that the system was in any way hostile to the interests of any small and well-conducted concern.

To recapitulate, the safeguards for India are first and foremost a national Government, national patriotism, government power to subsidise, government control government power to acquire for national purposes, government power to deal with monopolies, trusts and so on. On these lines we hold that a national Government should have no difficulty in ensuring its nationals an absolutely fair deal without discrimination.

The next heading deals with trade relations between Great Britain and India. When our Delegates last year discussed a convention the British commercial community had in mind that it would be possible at this Conference to come to an agreement which would regulate not only the position of the British commercial community in India but also the trade relations between the two countries.

We contemplate that if we can arrive at a commercial agreement on general principles between the two countries, not imposed but negotiated fully at this Conference, we should perhaps have established a bond between the two countries which would put the past months once and for all behind us and would enable the traders in both countries to get on with their work on a real basis of identity of interests.

In our view the conclusion of such an agreement would be as much an act of constructive statesmanship in the economic sphere as the definition of political relationship between the two countries in the political sphere. We have always interpreted the clause in the Minorities sub-Committee's Report as meaning what it says—namely, a convention based on reciprocity.

Naturally, such a document would provide for most-favoured-nation treatment between the two countries—the minimum basis possible, of course, between two countries under the same Crown—but we also contemplate that the principle of Imperial preference will be affirmed. Recent events have, I think, clearly demonstrated that the Dominions are supporters of this principle. In the papers to-day we see the Dumping Bill operating on this principle, and if India, which already gives a measure of preference to British steel and British piece-goods, is less enthusiastic than the Dominions, it is in my belief, due mainly to the fact that India feels that she is not entirely a free agent in the matter.

The sentiment has been summed up in a Minute of Dissent of the Indian Fiscal Commission which was signed by such patriots as Sir Ibrakim Rahimtulla, Mr. T. V. Seshagiri Ayyar, Mr. G. D. Birla, Mr. Jamnadas Devarkadas and Mr. Narottam Morarjee.

What these gentlemen said is this:

“ We will now summarise our conclusions in regard to Imperial preference. (1) We are in favour of the principle

of Imperial preference on the distinct condition that India should in this matter be put on the same footing of freedom as is enjoyed by the self-governing Dominions, and that the non-official members of the Legislative Assembly should be given power, by legislation or by other equally effective means, to initiate, vary or withdraw preferences as may be necessary in the interests of India in all its aspects. (2) That the condition precedent to any agreement with a British Dominion on trade matters on a basis of reciprocity should be a recognition of the right of the Indian people to a status of complete equality, and a repeal of all anti-Asiatic laws so far as they apply to the people of India."

We thoroughly endorse this principle, not only because we support Imperial preference but also because it is based on the reciprocity which we desire, and allows India a free hand to deal on a reciprocal basis with the other Dominions.

We are aware how time presses upon the Conference, and this subject is one of great importance and of some intricacy. Nevertheless, we believe that even at this eleventh hour it is not impossible that a general outline of agreement on these lines might be reached, and the legal drafting could be done later.

*Chairman:* With regard to that last remark, which is a very valuable one, do you suggest that there should be a sort of informal meeting to discuss these matters?

*Mr. Benthall:* Yes, I would make that suggestion.

*Chairman:* They would have to do it fairly quickly.

*Mr. Benthall:* Yes.

I have not heard all the speeches lately, but I understand that some of our fellow Delegates claim that commercial treaties and the employment of trade commissioners should be matters for the Government of India as opposed to the Governor-General alone. I am not fully aware of the constitutional difficulties involved, but, looking at it from the lay point of view we have no objection. We appreciate that commercial treaties and agreements would involve a number of Imperial questions, and that legislation thereon will require a measure of Imperial supervision or control, but with this exception we should be glad to support the claim of our fellow Delegates, and we see no reason why the Government of India should not have the widest discretion in the appointment of Trade Commissioners and Consuls.

I will next deal with the fourth head, the manner in which such an agreement as we may conclude, if it so happens that we do conclude one, shall be embodied in the constitution. We contemplate that, as a result of our discussions here, we shall arrive at an agreement setting out in some detail the principle of non-discrimination and also covering trade relations between the two countries. We contemplate that the result of our discussions would be set forth in the form of an agreement as a schedule to the Act. We believe that this will be a more satisfactory and a

more permanent method of dealing with that problem than a restrictive clause in the Act; and it is based on the idea of honourable co-operation.

Should any legislation of an objectionable kind be put forward directly or with intent to discriminate against minorities, we assume that the Governor-General would have exactly the same powers to deal with it in the case of British commercial rights as in the case of the rights of minorities. He would have power to return a Bill for reconsideration and disallowance and reservation such as exists in all Dominion constitutions.

We contemplate further that legislation of a discriminatory nature or legislation calculated to injure the interest of any minority will, by a clause in the Act, be compulsorily reserved for His Majesty's assent. This is following the parallel in Southern Rhodesia and other constitutions. We regard this as a very important safeguard for all minorities. The effect of this, as we understand it, would be that His Majesty's Government will examine the Bill. If it is reasonable, assent will presumably be given at once. If there is an objectionable feature, it will give time for His Majesty's Government to negotiate with the Government of India for the removal of the objectionable feature before assent is given.

*Chairman:* That is a reservation?

*Mr. Benthall:* It is a compulsory reservation; it *shall* be reserved. It will not prevent His Majesty's assent being given to a measure which was reasonably discriminating. I will only give one example, a simple one: that of a Bill dealing with, say, European Divorce.

*Chairman:* Would you divide reservation into the two categories of discretionary and compulsory?

*Mr. Benthall:* Yes. The Governor-General would have discretionary reservation for any Bills, I think, but compulsory reservation for Bills of a discriminatory nature. Should the Governor-General or the Governor concerned not reserve a Bill, and should that Bill in the opinion of a minority or an individual be discriminatory, the subject would have a right to claim before the Federal Court, with a final appeal to the Privy Council, that the Bill ought to have been reserved.

I cannot help thinking that possibly in these powers of reservation may lie the solution of some of our difficulties. Under the Merchant Shipping Act of 1894 the specific signification of His Majesty's assent is required. We think that all legislation dealing with major ports, which are so essential to shipping, should be similarly reserved. Equally, I think, immigration is a subject which has been considered a fit subject for reservation in other Dominions.

*Mr. Sastri:* Immigration?

*Mr. Benthall:* Immigration, I think.

*Dr. Shafa'at Ahmad Khan:* Emigration?

*Mr. Benthall:* Immigration. Is not that so? I am sure I shall be corrected very soon if I am wrong. I think immigration laws in the Dominions are reserved for His Majesty's pleasure.

*Sir Tej Bahadur Sapru:* I do not think so.

*Mr. Benthall:* Not necessarily all.

*Mr. Iyengar:* There has been no compulsory reservation.

*Mr. Benthall:* Not compulsory.

*Sir Tej Bahadur Sapru:* That exists in the constitution. The power of reservation may be exercised by the Governor in the exercise of his discretion.

*Mr. Benthall:* Yes, but I think immigration is one of the subjects which are set forth in the Governor-General's instructions in some of the Dominions as proper subjects to be reserved.

*Mr. Iyengar:* You are referring to native affairs apparently.

*Sir Tej Bahadur Sapru:* In the South African Constitution there is special reservation with regard to native affairs in the new constitution for the first five years.

*Chairman:* Are you dealing with Section 735 of the Merchant Shipping Act?

*Mr. Benthall:* I was, yes; it is 734 or 735; I forget which.

*Chairman:* It is Section 735.

*Mr. Benthall:* Yes. Similarly we think that it would not be unreasonable to ask that all legislation dealing with banks should be reserved.

*Chairman:* What about Section 736 of the Merchant Shipping Act? Perhaps you do not mind about that so much?

*Mr. Benthall:* What does that deal with?

*Chairman:* That is with regard to coastal trade.

*Mr. Benthall:* Yes, that permits the regulation of coastal trade by the Dominions' Governments.

*Chairman:* What is your view about that?

*Mr. Benthall:* I think India has given her assent to that in the last Imperial Conference of 1930, but I presume it would be subject to a reservation.

*Chairman:* Those are the two important sections—735 and 736.

*Mr. Benthall:* With regard to banks, we think that possibly legislation dealing with banks should be reserved. Such a course allows India to legislate freely, and it is most unlikely that His Majesty's assent would not be given to any Bill genuinely helpful to Indian interests.

With regard to *de facto* discrimination against minorities, we contemplate that the rights of minorities should be most clearly set out in the Act, and that the Governor-General should see that the spirit and letter of their rights are observed, and that whenever in his opinion those rights are infringed he should have power effectively to intervene.

In the case of a breach of the trade agreement, we contemplate that the procedure will be for the Government of India, where Indian rights are concerned, and the British Government, where British rights are concerned, in the last resort to claim that the matter may be laid before the Judicial Committee of the Privy Council or such other tribunal as may be agreed upon. Both countries would then be bound by this decision.

I should like to make a few observations on the parallel agreements. First, there is the convention referred to in para. 6 of the Burma sub-Committee's Report, where the hope is expressed that it may be found possible to conclude a favourable trade convention between India and Burma. It is important that the separation, if it takes place, should cause the minimum disturbance to the close trade connections which exist between the two countries. I presume that if Burma is separated an agreement will be drawn up on much the same lines as we have contemplated for the trade arrangements between Great Britain and India, and that a similar one will be required in some form between Great Britain and Burma.

With regard to Indian and British capital in Burma, the same principles governing external capital will apply in Burma as in India.

Presumably the relations between India and Burma will be settled on a basis of reciprocity, but with no representative of Burma present here, that subject cannot be discussed at the present moment. It will, however, have to come under discussion before the constitutions are framed.

With regard to the relations of Great Britain and each individual Indian State, the agreement to which I have referred will be a most admirable vehicle for recording the relationships of each State with Great Britain. We think the proper procedure will be for each State as it is admitted to the membership of the Federation to become a party to the schedule of the Act setting forth this agreement, subject to such modifications as may be specified in the Order in Council providing for the admission of the State.

Lastly, there is the relation between the States and British India. Here we contemplate the widest freedom of trade. At present States' subjects are not debarred from the widest freedom of trade in British India and they are also accorded political rights under regulations issued by Provincial Governments, but it is necessary that their rights should be regularised in the new constitution. That is a mere suggestion. I leave the matter to others more capable of dealing with it.

Lord Chancellor, the subject as set forth in that clause in the Minorities sub-Committee's Report seems a simple one, but the further it is examined the more complex it becomes. I certainly hope that my remarks have not served only to complicate the problem. In our opinion they indicate the only satisfactory way out.

In conclusion, I would return to my opening remarks. Clause 14 of the Minorities sub-Committee's Report revealed in reality a

very large measure of agreement, but it left the details to a reciprocal convention to be worked out. Speeches by members of the Conference in India did not disclose a very wide difference of views, and talks with responsible members of the Conference here have disclosed again that the breach is not very wide; in fact, myself I think that we have narrowed it down very considerably. At one time quite recently I even thought that the breach had been closed.

I have not much faith in big Committees for dealing with a proposal such as the convention, where detailed discussion is necessary, and in my belief the best way by which we can arrive at a definite conclusion on this matter is by a continuance of informal discussions possibly of a slightly wider nature than we have been carrying on hitherto, and I would repeat again that even if we cannot reach complete agreement on all the points, I am quite satisfied that we can carry the measure of agreement reached a great deal further than it was carried at the last Conference.

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*Mr. Jayakar:* Lord Chancellor, I have listened to Mr. Benthall's speech with great attention and a great deal of appreciation. There are many parts of that speech with which I cordially agree. I do not propose to follow him into the large field of topics with which he dealt in the course of his speech, because I have no time to do so. I shall confine myself, with your permission, to an explanation of the formula which was arrived at as a kind of compromise last year about the end of our Session.

*Chairman:* That is page 49 of the book.

*Mr. Jayakar:* Yes, My Lord. Thank you. Speaking generally, there is perhaps scarcely any other item of our work in England which was subjected to so much criticism in India as this formula was. I would take the liberty of saying that much of that criticism arose in ignorance of the genesis of that formula, the several stages through which that formula went before it was finally accepted, and if I may say so, the varying points of view which that formula sought to reconcile; and my endeavour now will be to explain in a few words how that formula came to be adopted, and the antecedents thereof. I will say at once that it was a very wise compromise between two opposing views, not to mention the fact that it had the assent both of the commercial men, Indian and European, who were present here at this time last year, and also the assent of legal men like Lord Reading and Sir Tej Bahadur Sapru and many others. Such a formula, *primâ facie*, must command considerable attention, because it is the outcome of a great deal of deliberation carried on by responsible men, and I propose to examine the several parts of that formula because I hold the view that it goes as far as it was possible to go, having regard to the circumstances which were before us at this time last year.

I may at once assure Mr. Benthall that, speaking generally, public sentiment in India does not desire to make any racial dis-



crimination as a general principle between one community and another.

I can assure Mr. Benthall, so far as one man's voice can do so, that India in the past has suffered so much from racial discrimination, both inside her borders and outside, that when she is a free country she will be very careful not to have any racial discrimination at all, as far as she can do without it.

This Committee is aware, Sir, of the inroads made upon India's self-respect time after time on the ground of race and nationality in many parts of the Empire and in many other parts of the world, and this has been a great lesson to India, so that when she is free and left to herself she will be very anxious not to have any racial discrimination as such, as a general principle.

If I may remind Mr. Benthall of what a Committee, consisting of very patriotic men, called the Nehru Committee, recommended, I would point out that that Committee was composed of men who were stalwarts in national life and were drawn from practically all communities, majority and minority. I would like to remind him of what they said about European rights and rights of discrimination, and I would invite Mr. Benthall's attention to page 11 of the Report of the Nehru Committee, where this question is considered and to which I attach the greatest importance. This Report bears the signatures of some of the most important men in India.

*Chairman:* You mean the sentence beginning "We are next confronted"?

*Mr. Jayakar:* Yes, My Lord. I will just read the material part of the paragraph:—

"As regards European commerce, we cannot see why men who have put great sums of money into India should at all be nervous. It is inconceivable that there can be any discriminating legislation against any community doing business lawfully in India."

*Chairman:* Yes, and perhaps you will allow me to say that when I read this Report I underlined that three times. I have it in front of me now.

*Mr. Jayakar:* The Report goes on:—

"European commerce, like Indian commerce, has had to bear in the past and will have to bear in the future, the vicissitudes inseparable from commercial undertakings on a large scale, and no government in the West or anywhere else has been able effectively to provide a permanent and stable solution for conflicts between Capital and Labour."

They go to the length of saying, in the next sentence:—

"If, however, there are any special interests of European commerce which require special treatment in future, it is only fair that in regard to the protection of those interests

Europeans should formulate their proposals, and we have no doubt that they will receive proper consideration from those who are anxious for a peaceful solution of the political problem."

This opinion, Sir, having regard to the men who put their signatures in approval of it, is of the utmost importance; and, if I may say so, it represents the bulk of the educated opinion in India. Speaking generally it is adverse to racial discrimination as such.

The Nehru Committee went further and adopted an expedient which I think it will be our duty in course of time to explore, because I think it furnishes the lines along which a solution can best be sought, namely, a clause with regard to the fundamental rights of citizens and a definition clause indicating what we mean by a citizen.

Perhaps I may invite Mr. Benthall's attention once more to this Report at page 102.

*Chairman:* Might we just get it on the notes; the definition of "citizen" is, I think, paragraph 3.

*Mr. Jayakar:* I am coming to that. It is page 102. Dealing with fundamentals rights, this is how the Nehru Committee state this point:—

"Clause 6: All citizens are equal before the law and possess equal civic rights."

That includes trading rights. Then, coming to the definition of a citizen in clause 3, at page 101, the original definition was this:—

"The word 'citizen' wherever it occurs in this constitution means every person"—

I leave out the first clause, My Lord, that is not material here—

"(b) who is naturalised in the Commonwealth under the law in force for the time being."

Then there is an explanation:—

"No person who is a citizen of a foreign country can be a citizen of the Commonwealth unless he renounces the citizenship of such foreign country in the manner prescribed by law."

After this definition was adopted the European community in India protested against it and they stated that that definition was not acceptable to them, with the result that the Nehru Committee met once more in Lucknow, after a few months, and Your Lordship will find they came to adopt an amended definition of citizenship, calculated to meet most of the points which Mr. Benthall raised in the course of his speech. You will find that definition stated at page 27 of the Supplementary Report of the All Parties Conference, 1928, and this is how they defined a citizen. They alter the definition and they say:—

"who being a subject of the Crown carries on business or resides in the territories of the Commonwealth."

Now, my submission is that this is a very wide definition and practically includes everyone, European and non-European who is a subject of the Crown and carries on business or resides in the territory of the Commonwealth.

*Chairman:* Would you just help me with regard to that? Is that summed up by saying that there shall be equal rights and equal opportunities to all subjects of the Crown lawfully resident in India?

*Mr. Jayakar:* Yes, that seems to be the meaning. Any British subject who either carries on business or resides in the territory. I believe the Nehru Committee went as far as it was possible to go, because they practically admitted to citizenship every British subject who was lawfully resident in the Indian Commonwealth or carrying on business in the territory. Some may say they went too far.

*Chairman:* Forgive my asking you a question, because you are always so very helpful. I simply want to clear my mind. Does that include a company?

*Mr. Jayakar:* I am just coming to that, My Lord. A person would include a group or company. We will, of course, have to make it clear by some means, *e.g.*, by altering the definition of citizenship so as to include a company registered in the Commonwealth of India, or carrying on business in India, having its registered office in the United Kingdom, or some such suitable definition will have to be adopted so as to complete the definition of a citizen.

*Chairman:* This is not a legal quibble; do you include corporation as distinguished from company?

*Mr. Jayakar:* I was just dealing with firms and companies.

*Chairman:* You began with individuals. Then we got on to companies and firms. It is rather technical. I suppose you would not have any objection to a corporation?

*Mr. Jayakar:* No. As a matter of fact in India there are very few bodies belonging to the class technically called corporations.

*Chairman:* I was thinking of English corporations.

*Mr. Jayakar:* I would have no objection at all. They would stand on the same principle as a firm and a company. I would ask whether wisdom would not require that we should get through this difficulty by adopting some such definition of citizenship which would give equal rights of trading to all those who carried on lawfully a business in India or who resided there lawfully.

*Chairman:* I am sorry to be so troublesome, but would that give all British subjects freedom of entry into India?

*Mr. Jayakar:* Well, that is not so clear, My Lord.

*Chairman:* I beg your pardon for interrupting.

*Mr. Jayakar:* This is what it says: they have all equal civic rights after they come in. Whether it would give them equal rights of ingress or entry into India is not clear from that definition.

*Chairman:* No; but I was asking your opinion, Mr. Jayakar.

*Mr. Jayakar:* Well, I would do it on the principle of reciprocity.

*Chairman:* Yes, I thought you would say that.

*Mr. Jayakar:* I would deal with the country from which the immigrant wanted to come to India and would find out how Indian nationals were treated in that country.

*Chairman:* I wanted to remind you of that.

*Mr. Joshi:* Would Mr. Jayakar give civic rights to all citizens of the Commonwealth without any consideration of the fact that in some parts of the Commonwealth Indians are not given civic rights?

*Mr. Jayakar:* I was using the word "Commonwealth" as meaning the Commonwealth of India, as the Nehru Report does. I am speaking of equality on the basis of reciprocity.

The original paragraph 14 was as follows:—

"It was urged that a commercial treaty should be concluded between Great Britain and India,"

and so on. That was the original paragraph, but when it came for discussion before the Plenary Session three or four points were made, and I wish to draw the attention of Mr. Benthall to those points, and to ask whether he would be prepared to concede them to the future Government of India.

Speaking generally, the principle of no racial discrimination is agreed to, but we all feel that there are special cases either of industries or of other public activities which may require special adjustment and special treatment, and all that we are anxious to ensure is that India should not barter away her rights to deal with those specific cases as they occur, according to special circumstances.

One such case was pointed out by Mr. Mody, who happened to be present here last year. I may mention that Mr. Mody is a man who occupies a place of great importance in Bombay; he is the Chairman of the Millowners' Association. He put forward one point which requires very careful consideration, and that you will find in his speech at page 321 of the Report of the Plenary Session. Mr. Mody, in my opinion, represented Indian national sentiment in taking that point. This is what he said:—

"While the principle of equality of treatment must be definitely conceded, it must be subject to the paramount consideration that Indian interests should be first. For instance, there may be certain key industries in which it would be necessary to lay down certain qualifications. The principle has been accepted by the Government of India themselves two or three years ago. The question came up of the conditions which should be imposed on companies which came into existence in future and which desired to operate an air mail service, and I think with the full concurrence of the Member

representing the Government of India, it was laid down that so far as companies operating air mail services were concerned, it was necessary that a certain proportion of directors and a certain proportion of shareholders should be Indians.

Now, so long as it is understood and so long as it is realised that in certain industries and national services it will be necessary to depart from the principle of strict equality of treatment, I have nothing to say."

Therefore India is anxious that although it accords its consent to the principle of no discrimination on racial grounds, it wants liberty to make special adjustments as circumstances arise with reference to certain industries which either are or may become in course of time of such national importance that special treatment will be necessary for those cases.

Mr. Sastri, whose sense of moderation and friendliness for England are above all doubt, at page 327 also expressed the view which I may say represents Indian national sentiment very clearly. Mr. Sastri said:—

"It is the right of every people to protect national industries and national enterprises from being killed or weakened by undue competition from non-nationals. The right must be secured in any constitution."

This is an important consideration which was urged by Mr. Sastri. Curiously enough, when the whole discussion was nearly coming to an end, and after Lord Reading had expressed his opinion on the point, your Prime Minister, who was then presiding, at page 334 also approved of this principle, as Your Lordship will find, in a short paragraph. This is what the Prime Minister said:—

"If there is national policy with regard to, say, key industries, supposing India wishes to manufacture optical glass which has been declared as a key industry in some countries for one reason or another, then India would be entitled to pass the same sort of economic legislation, as, say, this country would be entitled to pass."

Therefore in asking for this right we are not asking for anything which is preposterous. We say that while recognising the principle of no commercial discrimination on racial grounds we are anxious to reserve for our future Government of India the freedom to make special adjustments in special cases of industries which become important or are all-important at the present moment and may be described as key industries.

Curiously enough, My Lord, this doctrine received support from the most unexpected quarter—namely, in the Despatch of the Government of India, paragraph 190. This is what the Government of India say at the bottom of paragraph 190:—

"There are enterprises which Indians regard as national, and which at present are mainly or wholly in British hands.

It would be idle to expect that they would be content for an indefinite period to remain without their appropriate share in the conduct of these enterprises, and if the methods at first proposed in order to satisfy Indian hopes must be ruled out because they involve injustice, or are inconsistent with the position which Great Britain holds in India, Indians may fairly ask that the British business community should co-operate in finding other methods to bring about the desired result."

Therefore this is the first principle that we want to reserve for the future Government of India—the freedom to make special adjustments in the case of special industries which have assumed great national importance having regard either to the nature of the industry or to the nature of the times through which they may be passing, and we are very anxious that this right to make special adjustments should not be bartered away.

Another point which was brought out in another speech by an equally prominent member of the commercial community, Sir Phiroze Sethna, is also worthy of consideration, and I should like to invite Mr. Benthall's attention to it. That, Your Lordship will find at page 329 of the Plenary Session's Report. Sir Phiroze Sethna there again was expressing the united public sentiment in India on this point. About ten lines from the beginning of the page he says this:—

"What I want to point out is that that is a vested interest which was created by discrimination in favour of Europeans against Indians in the past. If that is admitted, then is it not open to the Government of India to-day to adopt measures whereby nationals may take a larger part in the basic industries and businesses of the country?"

And so it goes on.

In other words, sentiment in India is very strong on this point; although agreeing generally to the principle of no racial discrimination, if large industries which have assumed national importance are vested in the hands of a particular group or a particular community, owing to whatever cause, the Indian Government of the future must have the power of making adjustments, so that the people of the country come to acquire a larger share in the working of that industry. I am sure Mr. Benthall will agree with me that that is a very legitimate claim.

*Chairman*: Allow me to ask a question on that. Suppose there were very large British interests in an industry which you quite rightly thought was a key industry or national industry, would you be wishful to expropriate the existing British interests?

*Mr. Jayakar*: Expropriate, My Lord? I do not know whether it amounts to expropriation.

*Chairman*: I was only asking you.

*Mr. Jayakar:* If it took the form of expropriation, compensation may have to be paid; but, for instance, if an industry was entirely in the hands of a particular community which had a monopoly, it would not be wrong to help the starting of the same industry in other hands. What I am referring to is that certain industries of great national importance have come to be monopolies in the hands of certain individuals or communities. The future Government of India ought to have the right of offering to the people of the country a larger share in the working of those industries.

*Chairman:* Provided also that fair compensation be paid.

*Mr. Jayakar:* Only if it amounts to expropriation. If it means taking the industry out of their hands and depriving them of that industry it must mean compensation; but if it means starting or allowing the starting of a rival industry it is a different matter.

*Chairman:* What about subsidised competition?

*Mr. Jayakar:* I am coming to that point.

*Chairman:* I am sorry; I only want to get to grips with it.

*Mr. Benthall:* May I say to Mr. Jayakar that we are as anxious as anybody that Indians should have a fair deal. No one wishes to deny to any Indian industrialist or financier a fair deal. All we ask is that we should not be legislated out of positions which we have fairly won. We should welcome any measures calculated to give fair trading conditions to all alike, but I would add that if any person or any party is afraid of a fair deal and an equal chance, and wants something more, it strikes me the admission must surely be due to consciousness of shortcomings on his or their behalf. The whole of the second part of my speech was directed to show that it was possible that the very large powers in the hands of the Government of India meant that the Indian Government would be able to ensure a fair deal without discrimination. We base our claim on what I said, on the principle of reciprocity and on the fact that we are British subjects.

*Mr. Jayakar:* On paper it may seem to be very easy, but in the working of it out I have known two cases where the cry of racial discrimination went up although there was no discrimination at all. All that was intended was to see that the monopoly which rested with a company or group of people was shared with others. I say that such cases are not of racial discrimination, but I wish to make these points so that Mr. Benthall may meet them. If you are going to form a committee, as Mr. Benthall suggests, I think I should put these points before you so that you can meet them. I am trying to place before you the Indian national sentiment in the matter, and I have given you four or five points on which Indian opinion will have to be satisfied if a settlement is to be arrived at.

Then I think Mr. Benthall conceded the next right which was adverted to in the course of the speeches. That was that the future Government of India must have the power to regulate unfair com-

petition. Mr. Benthall may correct me if I am wrong, but, as I understood his speech, he conceded that right, the right to regulate unfair competition, unfair rates, unfair rebates. That is a very valuable right which we do not wish to give up. I have known cases, as Mr. Benthall has himself, of a powerful organisation coming plumb into the midst of an infant industry and wiping it out by superior competition. We wish to retain in the hands of the future Government of India the power to cut at the root of this unfair competition by making rules and regulations which will prevent that. Speaking of one company, without mentioning names, it was carrying on a competition with an Indian shipping company. It used actually to offer perquisites to those people who purchased its tickets. Methods which are adopted in order to meet that kind of unfair competition may look like racial discrimination, but they are not really racial discrimination. In practice many of these things are called racial discrimination in India. Therefore I want to make it clear as far as my individual opinion is concerned, that I think it would be wrong to take away this right to regulate such competition by legislation when we find that the competition carried on against our infant industries is unfair. For instance, supposing we were starting a munitions factory in India, and a big British company, taking advantage of the equality of privileges, came and planted a big factory in India. We must have a power of preventing unfair competition because we regard munitions as a key industry; and therefore we must have the right of so regulating the competition that our infant industry may not be killed. I would do the same with the Japanese or with the Russians if they came. It is not really a question of British and Indians: it is a question of protecting our infant industries which are in danger of being killed by the superior competition of other countries.

*Mr. Benthall:* I have no objection to discrimination against foreigners.

*Mr. Jayakar:* Then Mr. Benthall conceded the next right which I had in view, namely, the right which was recommended in the Report which he read as to the external loans, namely, the right of the future Government of India to lay down conditions as regards the capital and—more important than that—the composition of the directorates, and the admission of Indians for training in the company. If a company wants a subsidy from the future Government of India, the future Government of India should have the power to regulate these things, so that its subsidy may be given on those particular terms.

*Mr. Joshi:* May I ask Mr. Jayakar whether he has in view a condition about Labour, because in some countries that is so?

*Mr. Jayakar:* I would certainly include that. If I were in charge of the matter I would certainly include care and protection of Labour.

*Mr. Joshi:* No, it is not caring for Labour, but the employment of foreign Labour in preference to Indian Labour.



*Mr. Jayakar* : I do not want to commit myself to any opinion on a controversial matter like that. I will certainly examine the question. If Mr. Joshi means laying down conditions as to the proper treatment of Labour, maternity benefit and so on, I am certainly in favour of it.

*Mr. Joshi* : In some countries they do not allow foreign companies to be established unless the company agrees that not more than a certain proportion of the employees shall be foreigners.

*Mr. Jayakar* : That comes under my doctrine of reciprocity. Speaking generally, I am prepared to give foreign nationals the same rights as their countries give us. I think that formula ought to cover all these cases. Now what happened last year, My Lord, was this: when all these cases were pointed out at the meeting, it was thought better not to go into those details, but to have a formula which stood midway between two extreme positions; and then the formula was evolved that the working out of these exceptional cases should be left to a future convention. We only pledged ourselves to two characteristics of the convention. The first was that the convention was to work on the basis of reciprocity, and the second was that it was to be appropriate to all the circumstances of the case. We thought that would be the best formula to adopt, because otherwise we would go into details and there might be controversies provoked. Therefore the formula which was evolved was this, that all these would be the subject matter of a convention to be created in future when India was free and under her own Government. As Your Lordship knows, a convention can properly grow up only between two co-ordinate persons or co-ordinate bodies of persons; it cannot grow up with any justice or fairness between a Government and its subordinate branches.

Therefore we thought that the working out of these exceptional cases requiring protection had better be left to the future, when India was free, when India had a Commerce Minister of her own and he had gathered experience, he had the power, he had the legislative machinery behind his back, he had the public sentiment behind his back, and we thought that an appropriate convention could be much better worked out when that stage was reached rather than to-day; and I would request Mr. Benthall to reconsider whether, after all, having regard to the questions before us and the time at our disposal, and the necessity of arriving at some common agreement, he would not be content with a formula of this character which leaves the details to the future Government of India.

I am sure there will be a Commerce Member in course of time, and that Commerce Member would be backed by public opinion, he would have gathered his experience, which we do not possess at the present moment, he would have his legislative House behind him, he would be a man drawn from commerce, and we thought, and I submit it is the proper view, that it is better to leave the working out of these delicate adjustments, as I call them, these exceptional cases where India wishes to retain the right of protection, to be

worked out in future by means of a convention, binding ourselves, as we do, to two requisites—namely, that that convention shall proceed on the doctrine of reciprocity, and secondly that the convention shall be, taking all things together, appropriate—appropriate to the circumstances, appropriate to the principles and appropriate to the conditions then existing. Therefore the word “appropriate” was put there, and I remember, My Lord (not to disclose any secret), that the word “appropriate” was specially introduced at the instance of one or two prominent lawyers who were consulted, and they said that the word “appropriate” protected all those difficulties which we were assured would have arisen if we had gone into all these delicate adjustments last year, or, if I may say so, which will surely arise if we go into these delicate adjustments to-day. I would venture to ask Mr. Benthall whether he would not be satisfied with a formula like this. We agree to the principle that there is to be no racial discrimination. But how it is to be worked out in those cases of exceptional character to some of which I have referred—I have mentioned four or five, and many more can be imagined if we apply our minds to this question—is another matter, and I would ask whether it is not advisable to leave this question to be determined as India gathers experience and has the freedom to adjust her rights.

I will at once point out that if we have such a formula, and we further have a fundamental clause which gives to all the “citizens” the same civic rights, and have a somewhat wide definition of the word “citizen” of the nature contemplated by the Nehru Committee’s Report, that will meet the point. I know that in India it is common practice to refer to the Nehru Committee’s Report as the *ne plus ultra* of political thought, and I am pointing out that even the Nehru Committee’s Report went the length of saying that every British subject is a citizen who lawfully resides or trades in British India. Nothing better could be devised, and if we had this formula, which was a compromise last year between two contending views, and which I think is very sound, and also if we had a definition of citizenship coupled with the fundamental rights of citizens, including trading rights, it would meet Mr. Benthall’s view.

Before I conclude, My Lord, I wish to make one or two points clear. Mr. Benthall spoke of a treaty between England and India, a commercial treaty.

*Mr. Benthall:* A commercial agreement.

*Mr. Jayakar:* A commercial agreement, yes. It is on the same footing as a Commercial Treaty. Well, with great respect may I say that I do not see how that question comes to have anything to do with the question of discrimination against a commercial minority.

*Mr. Benthall:* I was trying to deal not only with the position of the British in India but also with the trade of the two countries, because I shall not be satisfied myself until we have safely covered

those two-fold relations to the satisfaction of both countries, because not until then do I think we shall have laid a permanent basis.

*Mr. Jayakar:* I quite follow that, but what we are trying now to consider and to meet is the fear of the British commercial community, as a minority, of being squeezed out or unjustly treated. That is the point we are now considering. The question of an ultimate commercial agreement between England and India is not germane to this question, and I submit that that question must wait until India is free. One difficulty I feel is that if we entered into a trade agreement and it was not ratified by the Legislature of the future, I do not know quite what would happen. We must therefore wait for a trade agreement between England on the one side and India on the other until the time comes when they are put into a co-ordinate position to enter into an agreement with one another and until they are equal from the point of view of dealing with one another. We want to meet as fairly as we can the rights of the British commercial community, but I do not wish that question to be confused with the question of a trade agreement between England and India. For that we must wait until India has her own government.

Speaking for myself, I think personally I would agree that when India is free there should be a trade agreement between England and India on the basis of the most favoured nation.

*Chairman:* That is right, the most favoured nation clause.

*Mr. Jayakar:* But I should be dealing with that in a different capacity and I do submit that the considerations which apply to the question of the European minority are entirely different from the considerations which apply to a trade agreement between England and India.

There are one or two other points with which I shall conclude. I think this formula should apply to those who are residents of the United Kingdom; I do not want it to apply to the whole of the British Empire.

*Chairman:* Not to British subjects but only to those from the United Kingdom?

*Mr. Jayakar:* Yes, because I am one of those who think that the future Government of India ought to have freedom to deal with every member of the British Commonwealth on its own terms, and I do not want that freedom to be interfered with in any way by anything we do here. We are quite willing that residents of the United Kingdom should be covered by this formula, but it should not be extended to any other country outside the United Kingdom. If New Zealand wants to trade with India under the future Government of India, it must be on a basis which is peculiar to New Zealand and India. We shall then examine what is the way in which New Zealand treats Indian nationals. We shall see how it treats our people. We wish to retain freedom to treat with every individual or every country in future that wants to seek the privilege of equality

of rights, and I submit, therefore, that this formula should not go beyond the United Kingdom.

I also submit that it should apply to those companies and firms which are registered in the United Kingdom and have an establishment in India for the conduct of their business. There are a number of companies which have no establishment in India for the conduct of their business, and which merely keep a stool in an office for the sake of their agent. I am very doubtful whether it would be an advantage to extend the same concession to companies of this character.

The last point which I propose to make is this, that if Mr. Benthall desires and thinks it will be an advantage to go beyond this formula now, and to seek to find out some way in which the several points he has in view, some of which I have referred to, should be dealt with, I ask him to consider whether really he will not be satisfied with this formula, and with the further assurance that we may agree to a definition of a citizen and of fundamental rights. I agree with Mr. Benthall that it may be mentioned as a fundamental right that there shall be no racial discrimination. He has also said that the Viceroy will have certain powers, as is the case in every Dominion. We shall also have the Federal Court, and, as our Report shows, every citizen will have the right to take a case right up to the Federal Court and have it decided whether particular legislation offends against the principle of no discrimination. I ask him, therefore, whether he does not consider it wise, having regard to all these things that are now provided—the Federal Court, the power of the Viceroy, the signification of His Majesty's pleasure—to be satisfied with this formula.

*Sir Tej Bahadur Sapru:* There is also the power of disallowance.

*Mr. Jayakar:* Yes, there is also the power of disallowance. I ask him whether with all these things he does not think it would be advisable to remain content with this formula, which had the approval last year of everybody except one, and then to wait until India is free and see that a proper convention is created. If I may venture to offer him advice, personally I think it would be better to insist on this clause, with the definition of citizenship and fundamental rights, and be content with the power to take this to the Federal Court and to rely on the other powers which have now been agreed on in the hands of the Viceroy or His Majesty. I would therefore request him not to make the matter one of detailed controversy, because I fear the agreement wisely arrived at on the last occasion may be lost, and we may get into a number of differences, we must not forget that there is school of thought in India that wants perfect freedom to discriminate between one community and another. I expect he is aware of that as much as I am. It is therefore advisable to be content with this clause and to rely on the other rights to which I have referred.

*Mr. Benthall*: I would just say, in reply to *Mr. Jayakar*, that our protection must be in the Act and must be of such a nature as to afford us proper protection.

*Sir Tej Bahadur Sapru*: There is no dispute with regard to that.

*Mr. Benthall*: I think this clause is too vaguely drafted to provide that.

*Mr. Jayakar*: Sometimes it is wisdom to leave things vague.

*Mr. Benthall*: I doubt if it would be in this case.

*Sir Tej Bahadur Sapru*: As one who had something to do with the drafting of this clause I admit it is vague, and that it requires careful revision.

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*H.H. The Nawab of Bhopal*: I should like to say something with reference to one of *Mr. Benthall's* remarks. I understand, My Lord, that *Mr. Benthall* expressed the hope that the principle of equal rights for Europeans would be extended to apply to the Indian States also.

I have no hesitation in saying that the States will gladly be prepared to extend to Europeans equal rights with their own subjects, so long as the Europeans do not expect any discrimination in their favour in the matter of jurisdiction and would submit themselves to the jurisdiction of the States. I want it to be appreciated that the States are always willing to offer equal opportunities to everybody, so long as they do not expect as a matter of right preferential treatment or claim special privileges.

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*Sir Purshotamdas Thakurdas*: Sir, I feel that the subject with which my friend *Mr. Benthall* has dealt at such length is not one which he has found very pleasant to dwell upon, and I can assure him that I am in common company with him when I speak on the subject. *Mr. Benthall* began by saying that he thought it was only right that he should be frank in dealing with this subject; and I am sure he would expect me also to be equally frank and outspoken in expressing the views which I know are shared very largely by Indians all over my country. It is a pity that we are, to-day, as far as the discussion on this subject is concerned, speaking in an atmosphere surcharged with suspicion and distrust—if you like it, on both sides, but certainly from the British here towards the aspirations of India. If I may summarise, in one word, the net result of what *Mr. Benthall* has suggested, I do not think I would be exaggerating if I say that he does not want no racial discrimination in India against the Britisher, but he would rather have—I do not know whether he insists on it or not—no discrimination regarding anything in which a Britisher is interested in India, irrespective of the merits of the subject, about which there may be some sort of restriction, and irrespective of whether there are Indians in that industry or in that particular branch of activity. The result of

what Mr. Benthall required struck me at any rate as indicating: "You shall not touch anything in which any Britisher is interested, and we want provision for it from now." I wish to submit that that is a tall order, and, if I may say so, it is a demand which does not appear to me to be justified.

Mr. Benthall appealed to us to put ourselves in the position of the Britisher who has an interest in India. I fully appreciate it and I can assure him that the just apprehensions of the Britisher are apprehensions which I do not underestimate and which I am quite prepared to value at their correct worth. But at the same time I would like him, when he is thinking over this subject further this afternoon, and before to-morrow morning, to put himself in the position of the Indian who is to-day seeking reform and advance constitutionally, and find out for himself whether the restrictions which he has indicated do not practically amount to shackles on the development of India commercially and industrially—shackles which have no parallel in any other country or in any other British Dominion. If Mr. Benthall will only promise that he will do it, I will assure him, not only on my behalf but on behalf of every one of my colleagues here with whom I have had talks about this, that we all wish to enter into the spirit of the Britisher who seeks protection in this matter from any aggression in the future.

One instance which my friend stated was this: He said that India has been built up economically and industrially with British capital. He then pointed out his ideal that India may in the future draw capital from London in the same manner as the United States drew capital from Britain in the early years of her development. I am sure it would not be difficult for Mr. Benthall to follow me when I say that there is hardly a parallel between the two. India has borrowed from Great Britain exclusively till now, but that capital has brought on all sorts of handicaps on India—handicaps of the most serious character, and handicaps from which the United States were completely free. Let me give only one instance which cannot be challenged and which will be appreciated by everybody. I name the company-managed railways of India.

The capital for these—and these railways have done enormous good to the country, and developed it; that is not at all doubted—was lent by London. The head offices of those companies were located here. The railways were managed from a distance of six thousand miles, and what handicaps did that bring us! In any ordinary country, behind the system of railways which developed from 1846 till 1900 and up till to-day, there would have been developed all those various subsidiary industries necessary in order that all component parts of the railways could be built in India. Was anything like that done in India? As long as the control was here with the companies they insisted upon sending out the materials from here, even at the risk of starving the one steel company which is looked upon in India as a national institution, and the greatest of pressure was required to be brought to bear by His Excellency

the Viceroy and the Commerce Member in India from time to time in order to get the company-managed railways on to the policy of purchasing their stores in India.

I can multiply such instances, but it is hardly necessary to do so. The facts which I am putting before you, My Lord, are facts which are undisputed and unchallengable, and I mention them only to point out that the parallel which Mr. Benthall draws is no parallel at all, and the average man in the street in India feels that the capital which the City of London has lent to India has been paid over several times not only in a return by way of interest, but in what strikes him as being more ruinous than a high rate of interest, *viz.*, heavy artificial handicaps put on the economic development of the country generally and on our industries particularly. I therefore feel that India would welcome capital on such terms only as would mean no political shackles: in other words, India does not want any capital which will need the safeguards which we are now discussing, the safeguards which form an item which is looming so large before this Committee.

Mr. Benthall further showed great apprehension about racial discrimination which may be practised by the future Government of India. I am sure Mr. Benthall will not misunderstand me when I say that he is suffering under the reaction of what has been done till now by the present constitution and our predecessors, the racial discrimination which has been exercised by the Government of India ever since India was taken over from the East India Company practically up to to-day. Instance the Services, Sir. And as several of the members here who have had occasion ever to read the Indian Legislature Reports know two of the most popular subjects for debate on the railway estimates in the Legislative Assembly are the third-class passengers' grievances, including reservation for Europeans only *qua* Europeans, and the great grievance of the Indian public that the Indian had no look-in on the higher Services of the railways of India for years and years. I submit that if we, or any of the extremists among us, any of the less thinking among us, have mentioned, whether consciously or unconsciously, whether meaning it or merely as a phrase, whether out of annoyance or seriously as a threat, racial discrimination in the future, they have learnt it from what the Government of India has been practising in India all these years. It may take some time to divert the attention of the Indian people from it; but we are all unanimous that we want to exercise no discrimination *qua* racial discrimination, no discrimination against a person or a company because it is a European or a non-Indian company; but surely that does not mean that we shall agree to shut out for ever the power of discriminating both against a non-national and against a national on other grounds more reasonable and more justifiable.

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(The Committee adjourned at 4.5 p.m.)

PROCEEDINGS OF THE FORTY-NINTH MEETING OF THE FEDERAL  
STRUCTURE COMMITTEE HELD ON THE 19TH NOVEMBER, 1931, AT  
11.0 A.M.

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*Commercial Discrimination—continued.*

*Sir Purshotamdas Thakurdas:* Lord Chancellor, I do not propose to dwell at any further length on the past to which I referred yesterday; I desire now to draw the attention of the Committee to the presentation of the case before us as it has been done in the Government of India Despatch; and, if I may say so, I feel that the presentation of this case in paragraphs 184 *et seq.* of that Despatch is admirable. What are the Government of India concerned with regarding the apprehensions of the British commercial community? In paragraph 184 they say:—

“The question is both important and difficult, for while we cannot but sympathise with the earnest desire of Indians to see their countrymen taking an increasing share in the commercial and industrial life of the country, we must also take account of the anxiety with which European business men regard the future after the transfer of power has taken place, and in so far as this anxiety may seem to be well founded, we are concerned to provide safeguards against injustice.”

In two subsequent paragraphs they deal with two items which they call comparatively simple items. In paragraphs 187 and 188 they deal with the main subject of the apprehensions of European commercial men because they compete on equal terms with Indian enterprise. In paragraph 188 the Despatch has this sentence:—

“... important sections of Indian opinion desire to secure the rapid development of Indian enterprises, at the expense of what British firms have laboriously built up over a long period of years. There is nothing surprising in the fact that national consciousness should thus have found expression. Indians who desire to see the growth of Indian banking, Indian insurance, Indian merchant shipping, or Indian industries find themselves faced by the long-established British concerns whose experience and accumulated resources render them formidable competitors.”

Thereafter in paragraph 189 they say this:—

“No one, we think, could fairly claim that the discretion of the Legislature should be fettered, except to the extent necessary to secure justice to those firms which had already established themselves in this country.”

Now, as has been repeatedly said by my Indian colleagues who have addressed the Committee before me, and by myself yesterday, we are agreed that the strictest provision necessary to this end should



be made either in the Statute or in any other manner which the Government here think necessary to ensure that no injustice will be done to a British interest, *qua* British interest. No injustice should be done simply on the ground that it is a non-national who will suffer by it. But I wish to ask whether a policy desirable in the national interest should be held back because a Britisher may be one of those affected by it. Such a policy should not and, indeed, would not be held back if an Indian or Indians were affected by it. Thus this demand of the Britisher seems to amount to something unwarranted—not to use a stronger word. Are the British in India not yet prepared to identify themselves with the interests of India first, second and last even though they are assured that no injustice could be done to them as a Britisher or a non-national?

In paragraph 189 the Government of India put forward in very eloquent manner the necessity of doing justice to both British and Indian points of view. They very cautiously, if I may say so, offer no solution of the difficulties themselves. They emphasise the desirability and indeed the necessity of leaving the solution to be brought about by negotiation at this Conference. Whilst the Government of India thus find the problem to be one which does not offer a solution by means of despatches I feel that it is unfortunate that we cannot spare the time now to have this matter thrashed out in a sub-Committee or by private negotiations.

I do not think I am giving away any secret if I say that during the last five weeks or so conversations have been going on between a few in this Committee, and I do not think that those conversations threatened to break down or to result in nothing; but, in view of other factors which developed in this period here and diverted the attention of some of those who were taking part in these informal conversations, no conclusion has been yet arrived at, although I think it would be only right to say that as a result of the conversations the two opposing views appeared to draw nearer and certainly not to draw further apart.

In paragraph 188 the Government of India give out a note of caution which I would like the Committee to note carefully. They say:—

“ We feel real apprehension as to the consequences which may ensue if the present attitude of mutual suspicion and embitterment is allowed to continue and grow worse.”

I feel, Sir, that this sentence in the Government of India Despatch, as far as this particular problem is concerned, has very great significance. If no settlement can be arrived at at this Conference, I wish to ask in all seriousness: Is it likely that a better settlement would be arrived at in the future—either the near or distant future?

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Let me, Sir, refer to one subject which, although it may not have been mentioned until now may be uppermost in the minds of

several here. A good deal has been said regarding the way in which the relations between England and India have been embittered and strained by the movement which has been known as the "boycott movement." Is it likely that this movement will completely die out because we arrive at certain decisions which do not substantially accord with the objects which we wish to secure? I wish very frankly to state that statesmanship requires that by any method that you like, and at the sacrifice of any amount of time which you think is necessary, we should not be allowed to leave London—I deliberately use the words—we should not be allowed to leave London until we have settled this question in a manner in which men alone can settle now or will be able to settle in the future. No demi-god or angel from above will come down from the heavens in order to ensure settlement of this. I therefore feel, Sir, that as far as the constituency which I have the honour to represent here is concerned, I cannot do better than read out to you a resolution which they passed at their last general meeting in Delhi in April, 1931:—

"The Federation of Indian Chambers of Commerce and Industry disapproves of clause 14 of the Report of the sub-Committee No. III of the Round Table Conference which deals with the rights of the British mercantile community. The Federation cannot agree to any restriction on the discretion of the future Government of India, to which there is no parallel in the constitution of any other free country, as in the opinion of the Federation any restriction of the kind suggested would so fetter the future Government as to render it powerless to protect or promote indigenous enterprise and that the Federation puts its view on record that no reservations or safeguards of any nature whatsoever will be acceptable unless they are proved to be in the interests of India."

*Chairman:* I did not catch what clause you said. Did you say it was referring to clause 3?

*Sir Purshotamdas Thakurdas:* Clause 14.

*Chairman:* It is at page 48.

*Lord Reading:* I could not follow it. Is the objection of that Conference to clause 14 as agreed at the sub-Committee?

*Sir Purshotamdas Thakurdass:* No, the objection of that Conference is to the vagueness about the clause which is being discussed here. The question of this vagueness has been the underlying reason of Mr. Benthall's speech.

*Sir Tej Bahadur Sapru:* Which clause do you mean—the clause as it originally stood there, or the clause as finally accepted?

*Sir Purshotamdas Thakurdas:* The clause as finally accepted.

*Lord Reading:* It is the amended clause 14.

*Sir Purshotamdas Thakurdas:* Mr. Benthall further referred to the trade relations between England and India. My friend

Mr. Jayakar has dealt with this and I do not wish to supplement his remarks because I do not think there is anything more I can usefully say at this stage. But there are funny apprehensions in connection with the likelihood of India under a self-governing Government building up enormous tariff walls immediately against imports from abroad, including perhaps imports from Great Britain. I have been in the Central Legislature for the last seven years, and unless I have grossly misinterpreted the inclinations of members from the rural and urban areas in the Central Legislature I am convinced that the reformed Legislature of the sort that we contemplate in a self-governing India will be very chary about passing any legislation regarding import tariffs, and that they will bring up with greater emphasis than has been done till now the question of the interest of the consumer. I myself feel, and I have said it before now, that the opposition that has been forthcoming till now in the Central Legislature regarding any protective measure is likely to increase at least ten times if people were assured that there was no control being exercised from outside India and that the Government of India were free to take decisions on the merits of a case as it affects India alone. I say, therefore, that any apprehension regarding tariff walls being put up as soon as we come into power is based on very wrong grounds. I am convinced myself that no such apprehensions are justified at all.

Mr. Benthall thereafter referred to the question of Imperial preference, and what more eloquent conviction can he want than what the revered Mahatmajī on the other side of the table said in his first visit to Manchester, when he said that as soon as the political problem is settled he sees no reason why India should not extend even Imperial preference to Great Britain.

In regard to this, however, there is a tragedy to which I should like to refer. It was not more than about eighteen months ago that when some protection was being devised by the Government of India against imports from Japan into India, it was coupled with what was almost a dictation—I understand it was—from Whitehall that this should be coupled with preference to piece goods from Lancashire. Several of those who are present here, reasoned with, implored and beseeched the Government of India to drop that part of the measure and allow the rest of the legislation to go through. Our request in this direction not having been heeded, members like my revered friend Pandit Madan Mohan Malaviya and others thought it necessary to resign from the Assembly. The tragedy of it is this, that what was carried through the Assembly in such a manner was hardly of any avail, and to my mind it has been almost a dead letter as far as being effective for Lancashire.

I therefore feel that what is required is greater trust. Trust us in India to do the right thing; trust us not to do anything unfair, and trust us also to rely more on England in a friendly spirit and in a spirit of seeking co-operation, even of seeking help from Great Britain.

Reference has been made to the Report of the Indian Fiscal Commission as far as the minority part of it is concerned, and particularly with regard to the question of Imperial preference. I know that the Indian commercial community stand by every word of what has been said there, and we look forward to the day when we shall have a Legislature which will be free to impose, to modify or to withdraw or to alter Imperial preference with the vote of the elected members of the Legislature, without any weightage from either nominated or official members therein. If no preference for Great Britain has been considered in India till now, it is because we have not had the Legislature which has been envisaged in the minority Report of that Commission.

Reference has been made to activity in India regarding Indian insurance companies. Here also I have a short history to relate. It is about five years since we in the Indian Legislature pressed the Government of India to modify the Indian Insurance Act in a manner which would make it difficult for companies of indifferent standing from foreign countries to come to India and canvas for business by offering enormous discounts. The Commerce Member of the Government of India agreed that it was necessary to do this; in fact, there were several promises by him that a draft Bill would be put before the Legislature in a few months time. Months passed and years passed. We got a little impatient, and we were then finally informed that the whole thing was being held up until you in England passed legislation with reference to your Insurance Act. This legislation here having been held up, the very necessary legislation in India has not seen the light of day, and it is feared that we in India shall have to wait several years longer unless the constitution is substantially changed.

My Lord, there has been great resentment shown during the last five years in India, and here also regarding the manner in which Indians push forward Indian insurance companies and want their policies to be accepted all round. I have been one of those who have had something to do with pressing the claims of Indian insurance companies in this connection. We have been told that Indian insurance companies are not as substantial and as sound, and have not such large invested capital and reserves, as British companies and some of the others. That is only natural. We started in this direction only in the last ten years. I know of one or two Indian enterprises in this connection which were started at the beginning of this century but for several reasons which I need not go into to-day those insurance companies had to go into liquidation. I want to say however, that there has been no case known until now where an Indian insurance company has gone into liquidation letting down its policy holders.

All that was desired is that Indian insurance companies should be put on the approved lists of the big corporations which work in India. Some progress I must say has been achieved in this direction but it has been very tardy and slow progress and not without considerable agitation on the part of those who are interested in

this being put forward. I compare with this what I have seen during the last few weeks in London. There is at present a campaign being conducted for the purpose of making people buy British goods. "Buy British Goods" is a slogan which I myself endorse for England and it has the approval of no less a personage than His Royal Highness the Prince of Wales. Only three days back I understand His Royal Highness broadcast a very important speech asking people to buy British goods. All that we do regarding insurance business in India is that we ask people to insure in Indian insurance offices and they may select the best or any of them. I repeat that there has been, as far as I know, no Indian insurance company which has let down its policy holders.

*Lord Reading*: What is your argument? It is rather difficult to follow. Do you suggest that there has been any interference with Indian insurance companies by the Government of India?

*Sir Purshotamdas Thakurdas*: Not as far as the Government of India are concerned, but as far as other corporations are concerned. British banks also I understand hesitate to accept Indian insurance policies. Perhaps Lord Reading would like to know that there was a circular issued by the Government a few months back where the propaganda was in the direction of showing how dangerous it is to insure with Indian insurance companies.

*Sir Samuel Hoare*: I should very much like to have a copy of that circular. I have not seen it.

*Sir Purshotamdas Thakurdas*: I can fully understand that Sir Samuel Hoare may not have seen it, but I am sure the Government of Bombay will be able to send him a copy of it.

*Sir Samuel Hoare*: I am informed that here in London we have no such copy and I have no information on the subject at all.

*Sir Purshotamdas Thakurdas*: There has been correspondence on it.

*Sir Samuel Hoare*: There has been no correspondence with the India Office.

*Lord Reading*: May I ask one question?

*Sir Purshotamdas Thakurdas*: May I reply to Sir Samuel Hoare? I will certainly try to get all the correspondence in connection with this case but obviously you do not expect me to have it in my possession in London.

*Sir Samuel Hoare*: No; but you state that the Government of India were making propaganda against Indian insurance companies.

*Sir Purshotamdas Thakurdas*: Yes.

*Lord Reading*: You are not saying the Government of India, are you?

*Sir Purshotamdas Thakurdas*: The Government of Bombay. The circular was put forward by the Government of Bombay.

*Lord Reading*: The only point I want to clear up is whether you are referring to the Government. If you are referring to the

Government of Bombay I think I know something about it. I have only heard about it and you know a great deal, but am I not right in saying that the circular—I am not defending it, I have not seen it and if it is what you purport to say I should not attempt to defend it—am I not right in saying that it was issued in consequence of the movement carried on to boycott British insurance?

*Sir Purshotamdas Thakurdas*: It was issued at the time of the Civil Disobedience Movement, but I wonder how the Government of Bombay or any Provincial Government of India would be justified in issuing a circular under the official authority of the Government running down any Indian insurance company or the Indian insurance movement as a whole.

*Sir Samuel Hoare*: We had better wait for a copy of it.

*Sir Phiroze Sethna*: May I be allowed to say in regard to this circular, that in the Council of State I asked the Government of India if they knew that this circular was issued by the Government of Bombay and, if so, that it was issued with their knowledge and consent? In their reply the Government of India could not deny the existence of this circular, which was distributed broadcast with the help of police sepoy in the city of Bombay. The circular was aimed more at Indian banks than at insurance companies, and I referred to it, My Lord, in my speech of last year, a copy of which I have just sent for from the Secretariat.

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*Chairman*: We will try and clear this up.

*Sir Purshotamdas Thakurdas*: Sir, a good deal of the suspicion that I referred to in the beginning has arisen from the Bill which is now known as the Coastal Traffic Bill. I personally feel that it cannot be the intention of anybody, including Mr. Benthall, to withdraw from the new Government any power that the existing Government have. In fact, what is *intra vires* to-day I do not think should be made *ultra vires* hereafter. But in connection with that I have come across a somewhat striking circular letter here since I arrived which I propose to read to this Committee. It is a circular letter which was sent to all candidates for Parliament at the last election. It is a letter issued by the Mercantile Marine Service Association of Tower Building, Water Street, Liverpool—an association which claims to be the senior representative body of British Shipmasters and Officers. It is a comparatively short letter, but it is so important that I am sure my colleagues would like to hear it.

*Chairman*: What is the date of it?

*Sir Purshotamdas Thakurdas*: The 20th October, 1931. It reads thus. The heading is:—

“ 45,000 British Seamen unemployed.

Sir,

There are over 700 British-owned ships lying idle in the ports of the United Kingdom.

Foreign-owned ships, carrying smaller crews and paying wages below the British standard thus capture cargoes which should be carried in our British vessels.

In our coastal trade it is estimated that foreign-owned vessels will this year carry over 750,000 tons of cargo from port to port in the U. K.

Foreign maritime countries confine their coasting trade exclusively to their own nationals, not only with success, but with profit. Why should we not take a leaf out of their book and insist on British cargoes being conveyed under the Red Ensign.

In the coastal trade alone it is computed that no less than 66 vessels flying the British flag are thus deprived of trade and 600 British merchant seamen debarred from earning a living.

In our national interests this unfair competition should be stopped, otherwise this country will lose entire control of the carrying trade.

My Council, the senior representative body of British Shipmasters and Officers, wish me to respectfully enquire what you are going to do to combat the unfair competition which drives British-owned ships into dock and our sailors into idleness.

I am, Yours faithfully,

THOS. SCOTT,

*Secretary."*

If, Sir, this is the aspiration of an important association in Great Britain—the country which rules the waves and which has the most premier position on the high seas—is it surprising that we in India should aspire to a little activity in that direction? The details of it are not a subject to be considered in this place; the Legislature in India would be the right place; and there are the usual powers reserved under the constitution, to which everybody agrees, with the Governor-General.

Why make so much of the aspiration of a country which feels that it has been kept back from its natural share in shipping activities? And how do you in London justify this circular which has been sent out by the most powerful of interests in the premier country in the world which has command over the seas? I wish, therefore, only to point out that the Coastal Reservation Bill and our aspirations in connection with it should not act as a red rag to Britishers here. I cannot help feeling that unfortunately too much importance has been given to that one Bill, and I feel that under the new constitution and the protection about racial discrimination which we are offering there is power reserved in the ordinary course which will meet with anything unfair being done.

Mr. Benthall has referred to reciprocity in countries which are to be given the rights he asks for in India. I know that many will see comparatively little objection to it, but I want to point out that so far as trade with Great Britain is concerned the effects of reciprocity will be of little or no value to India. What has India to gain from England reciprocating in the way which Mr. Benthall has indicated? It has to be noted that in spite of the relations between Great Britain and India during the last hundred years at least there is no Indian house or firm established here which does commercial business with India on a scale which can be computed in any respectable proportion to what is being done by British houses. I am not criticising it; I am only mentioning a fact. For whom is the system of finance which is known here in the London money market as "house paper"? This means that all firms which have their head offices here, or important offices here, and have branches in India, are allowed to send out exports to India for import there, and instead of drawing on their branches or agents in India they discount that paper here with the endorsement of one of the exchange banks here. That has in practice been restricted to British firms only and no Indian firm or house has come in for that facility. Again I say I am only mentioning a fact; I am not criticising it. It may be said that it is due to lack of enterprise of Indians. Possibly; but if, after a hundred years the enterprise of Indians in London is at such a low ebb as this I only wish to point out that reciprocity cannot mean much to us for a long time. The Bank of England has a rule—very necessary perhaps, and may be very justifiable; I am not complaining about it—that any paper which is discounted by it must have the signature of at least one British party or bank. In addition the Baltic Exchange and the jute salerooms here were not open to Indians until very recently. Jute is a monopoly crop of India, and it was not until 1929 that, thanks of the efforts of Lord Irwin and one or two other British commercial friends here, the doors were thrown open to one Indian firm in each of these two places. Even in the jute salerooms here, where it is the sole monopoly of India that is dealt in, the doors were closed against any Indian firm or personnel being members of it.

I, therefore, feel that whilst we note the reciprocity which would be available to us, and which is open to us to-day, there is nothing in it which affords any sort of advantage which can attract the Indian.

Mr. Benthall says we are equal partners in a Commonwealth of Nations, and asks us to avoid the risks of discrimination and bitterness. In fact, he asks us to come into an equal partnership where, if I may use a colloquial phrase, "what is mine is my own, and what is thine is ours jointly". It would be a partnership in a commonwealth which has no precedent or parallel. It would put a clog on the economic advancement of India and impose an irredeemable mortgage on the economic improvement of the country, and render all improvement of political status such as is envisaged by this Conference completely nugatory.



My earnest appeal is that the British commercial interests should trust the Legislature and rely on the powers vested in the Governor-General in the ordinary course. They should trust to the theory that money knows no artificial boundaries, and that greater co-operation between Indians and Britishers is bound to come about with the satisfactory solution of the political problem. There is no distrust of external capital *per se*; what is being distrusted is any capital which may lead to handicaps to the development of the country as it should develop, handicaps which would not be allowed in any country.

Why should India prefer for trading and purposes of borrowing any other national to the Britisher? India will need all the capital which anyone can give her, but she will take it and appreciate it only on the usual commercial terms, without involving political shackles. Of all the various nations, the British know Indians and India best, both our strong or good points and our weak or bad points. There is no need to imagine or apprehend any discrimination being exercised by India under the new constitution on the Britishers there. Will not a self-governing India, with all the responsibility it must carry, be conscious of the risk of any unjustified action?

The atmosphere of suspicion under which both sides labour requires to be dispelled by self-confidence on the side of the Britishers and a pledge on the Indian side that they will not discriminate to the injury of the other side. These things should dispel that atmosphere. In fact, as I have said, we are quite prepared to have it in the Statute that there shall be no discrimination *per se* against any non-national.

I look forward to greater co-operation between Indians and Britishers after we know that we are free to manage our own affairs. There is, however, one condition, namely that this question should be settled now, without further embitterment and distrust. If England wishes the solution of this question, and I do not doubt it, you will be able to solve it best now. What further factors hereafter can simplify the solution? Further investigation and delay must mean impoverishment and set-backs, and what more fertile soil for communalism and for undesirable tendencies in general can there be than poverty, and increased poverty hereafter? And that may occur as a result of the discontent which may be aroused if the question of political progress is not settled now.

Finally, I wish to refer to the psychological effect of the right step now on India. India is known to be a land where the people do not easily and lightly forget any good turn done to them. We are known to be a set of people who are always grateful for any good turn. I submit that this is the occasion when, if this question is settled without delay, Indians will feel grateful, and the two countries will be drawn nearer and nearer together and no further artificial safeguards or shackles will be necessary.

I have done, My Lord.

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*Lord Reading:* The subject that we are discussing is of very great importance both to British subjects here and also in India. I do not propose, in the observations that I shall make, to travel into a series of specific cases such as have been referred to, especially by Sir Purshotamdas Thakurdas just now. If he will forgive me for saying so, I think they have very little bearing on the points that we have to consider.

What we are discussing here is a matter of general principle. I quite appreciate that it may be useful to illustrate an argument by a specific instance but the difficulty I find in following the matter is that except in one case to which reference was made—that is the Government of Bombay—the rest of the instances were not actions by Government at all but were actions by individuals in the course of competition in business. I think we are not at all unfamiliar in this country with that sort of thing. Smaller houses suffer equally in this country from the action of larger houses who may have greater power. The larger house with its reputation and its capital has advantages over the smaller house. I do not propose to go into these instances for the reasons I have given and I am sure I shall not be misunderstood by Sir Purshotamdas Thakurdas. It is not that I do not appreciate their value from one point of view but I cannot see myself that they help us to solve the problems that we have in mind. I propose to address myself to a general question and to attempt to find some solution of the points at issue.

What I would desire to say at the outset is that I was myself much impressed by the statement of the case made by Mr. Benthall who evidently on behalf of the Association which he represents has studied the case in every possible shape and form and put it very moderately and also with the desire to arrive at agreement. He was ready to carry on negotiations and indeed Sir Purshotamdas Thakurdas has also had something to do with negotiations. I know his power and influence and the assistance he can give in these matters and I know that he has been trying to arrive at a settlement. It is a pity that it has not been reached at this moment. I would add that the speech made by Mr. Jayakar impressed me very much. If he will allow me to say so I thought it was the speech of a man who had approached this large question of principle with a real desire to deal fairly and justly with the subject and to seek every possible means of finding agreement, realising, as I thought he did very well, the necessity for avoiding any conflict of opinion on a question of discrimination against the British traders and desiring on the larger principles of justice and equity that there should be no discrimination. I mean to follow the lines that he put forward and to attempt to contribute to the solution and also to deal with some of the later observations of Sir Purshotamdas Thakurdas.

But, My Lord Chancellor, nobody can have listened to the discussion which has taken place to-day, yesterday, and throughout the Conference, last year and the beginning of this year, without realis-

ing that in truth on the broad question of principle, which is after all the vital matter, there is no difference of opinion. There is a much greater body of agreement than would be imagined in listening to the speeches. There is a danger sometimes, when one strays off the broad road and gets into past history, of introducing some bitterness. I shall refrain from doing that; I want to deal with the facts. I would only say to those who dwell upon matters that have passed in the history of India that the principles of government, and of just and fair government, have undergone much evolution during the last hundred and seventy years, and that that not only applies to Great Britain and to the Government of India, but to everything that obtains in India, and that has made such steady substantial advance and progress by its relations with Englishmen, by what they have taught, by the principles of justice and equity which are so dear to us and which India has adopted from us.

I want, therefore, to take first the broad question and then to deal with the difficulties that arise on it. I understand that there is no question of dispute, and I am not now going to deal at this moment with the particular formulæ that have been referred to; but this is the general principle if I am right. If I am not right I shall be glad if I am contradicted, because it is of the essence of the argument that I am putting forward. In general principle everybody here at this table recognises that in trade, commerce and industry no distinction shall be made, either in legislation or in administration, between Indian and British subjects or between Indian and British corporate bodies. I understand there is no dispute about that, and indeed I should not imagine that there would be. Certainly from what I know of India no Indian would stand forward and say that what he desires is to draw a distinction, either in legislation or in administration, between a British subject and an Indian subject; he does not want to do that. I am not leaving out of account what is at the back of his mind and what is at the back of some of your minds when I am mentioning this proposition; but that is the basis upon which we proceed and it is a basis upon which there is agreement. Nobody wants in India, if you have the fullest powers of Government, as I understand it, to penalise a British subject as a British subject, or to distinguish between him and an Indian in the carrying on of his trade. That is not your wish at all.

I gather that there would be no difficulty, therefore, in arriving at the proper formula upon this subject. There have been a number of attempts to reach a formula. I had the honour of presiding over a committee on which a number of us sat at the request of the Prime Minister, including Sir Tej, and, if I remember right, Sir Phiroze Sethna, and a number of others; and we eventually reached the formula which is now on page 49 of the Report. It has been said that that is a vague formula. Well, I agree that it is neither specific, nor is it very precise. To my mind it has advantages in that respect because it is elastic. The very reason for making a general formula was at any rate because it was felt that one could not always picture to oneself the specific cases that might arise.

If I might venture not in the slightest degree to criticise but to suggest to Mr. Benthall and his colleagues of the European Association the difficulty that I think we are in with regard to the various instances given, and which made a rather formidable catalogue of matters to be dealt with, it is that they are the specific instances in which they think it probable, or I will not say probable but possible, that there might be discrimination, and therefore they want those matters specifically dealt with. Well, for my part I would prefer the general method. The general method has the advantage that it covers not only the specific cases to which reference has been made, and which are in the minds of those who are dealing with it, but also the specific cases which may arise in the future; because no human mind can foresee what, in the developments of business in the world, may be the specific cases that may arise; and I confess that I am more disposed to the formula of general application than to dealing with the specific instances to which reference was made; and although I do not for a moment suggest that this formula is perfect—it was evolved by us in a morning's consultation after a great deal of discussion—yet it had the merit, and it was a great merit at that moment, of receiving the assent of everybody except, if I remember aright, that of Mr. Jinnah; and Mr. Jinnah will forgive me for saying that at that particular period he was in a non-assenting mind.

*Mr. Jinnah:* Lord Reading, I still hold the same opinion, and you see the difficulties you are face to face with now in preparing this formula.

*Lord Reading:* Well, I did not expect Mr. Jinnah to say anything else. I should have been disappointed if he had told me that he had now come round to my view. But, of course, I accept that and I stated it at the time, I think, to the Prime Minister. That is the position, and, as I say, although I am not pressing for this particular formula I do think it is a formula which will be of considerable use when we come to put into practical shape what should be accepted, because it has the advantage—and that is what we are seeking to obtain here—of general agreement, and it covers a number of cases.

I am also impressed, very much impressed, by the reference to the Nehru Report. It is said there—I do not know that I am quoting the exact language; I do not happen to have the amended Report—that it was quite inconceivable that there should be anything in the nature of discriminatory legislation. That was the view of the All-India Committee, and I accept that, and we may start from that basis. Therefore, it being in conceivable, there cannot be any objection, so far as we can, of course, to our making provision to possibilities. We have got to protect against possibilities, because we always have to remember that it is not to protect against those who may be sitting round this table, and who may be taking part in the discussion. They will not be there always, and, indeed, if I may be forgiven for saying so, one is not sure which of them may be there at any time. We

know from experience in this country how changeable the electorate may be. I am sure you will agree.

*Mr. Wedgwood Benn* : I do agree!

*Lord Reading* : All that I want to say with regard to it is that in view of that I proceed, as I think, upon a line which is clearly marked out, and with no difference of opinion. It is for that reason that I am mentioning it and laying great stress on it. I might be asked then, "If you agree that it is inconceivable, as the Nehru Committee thought, that there should be discriminatory legislation, why do you want to legislate against it?" Well, of course, the answer is the one I have given you just now.

One has to bear in mind the future, and that the constitution which is now being made will last, I hope, at any rate for a considerable time.

Now, Lord Chancellor, that being the starting point, I would only just refer further to the definition of citizen and the declaration of fundamental rights. I am referring to these because I think taken together, if I may suggest it, those who are so familiar with the very difficult art of drafting Acts of Parliament will be able to put into language what is in our minds and what I am trying to prove is agreed between all of us.

Now, the definition of "citizen" as amended in the Nehru Report—I think it is on page 27—is "a person who, being a subject of the Crown, carries on business or resides in India". That is a citizen, and that citizen is to have all the rights enumerated in the declaration of rights; and that definition of a citizen, as I understand it, would cover everybody who resides there as a citizen or who carries on business in India.

I have two difficulties with regard to that to which I want to draw attention, but only for the purpose of giving assistance at arriving at a conclusion and not because I think there are differences of opinion. One difficulty is that that would not cover, in relation to business, either firms or corporate bodies. I understand there is no objection to that, and indeed Mr. Jayakar said quite frankly that he drew no distinction between a company and a corporation, and his whole argument tended to prove that he drew no distinction either between a natural person and a firm and a company or corporation, and obviously not. For this purpose, therefore, one would have, whatever may be the rights that are involved in citizenship, to take it to apply to corporate bodies and to firms as well as to persons.

Then one very strong objection I should have myself merely to this as a definition, and to its being taken as giving all that is required, is this. The point was put to me, I remember, when we sat on this Committee at the beginning of this year and I then objected to it. This has one very grave disadvantage from my point of view, and I think our Indian friends will agree. It not only involves citizenship but it involves something more, namely that in order to become a citizen of India a person must cease to be

a citizen of this country. Well, that is fatal from our point of view.

I do not mean to mention any names, but I would ask you to think for a moment of those who are identified with business in India, with Indians, but who are British subjects, who are domiciled here and are citizens of this country, but who have lived in India for a great many years. If they have to become citizens in the sense of this definition for the purpose of getting these rights they would have to become naturalised, they would have to lose the citizenship which they have in this country.

I think that obviously the objection has only to be stated for it to be seen that that is impossible as a definition to meet the cases with which we are dealing. You could not think of asking a man who is in the relation of which I have spoken to give up his citizenship in this country in order to get the right to carry on his business in India and to get the same rights as the Indian-born subject. Therefore, if it is to be used in any way, there must be this further amendment to it, that if a man becomes a citizen of India it does not involve the giving up of his citizenship in Great Britain or the United Kingdom. But even then I confess I am not satisfied because I do not think it goes far enough. The definition carries you a long way but may I call attention to the one particular subject which is not quite clear to me? I thought as I followed Mr. Jayakar that he had answered the question but I am not quite sure and therefore I would like to have his attention now. I quite understand the position as stated by him with regard to any concern—either a person or a firm or a company—carrying on business resident in India. What was not quite clear to me was the line he was taking with regard to those who were not resident in India but who were carrying on business in India. What I mean is this. Here is a person carrying on business who is not resident in India and has no intention of going to India but who has business relations there, correspondents and agents who sell his goods. He is carrying on business in India but he is not resident there. As I followed some of the observations I took it that it was not intended that he should be deprived of the same protection. It was intended I thought that he should have the same right to trade and that there would be no discrimination against him as a British subject carrying on business in India. I understood that no distinction was to be drawn. Am I right?

*Mr. Jayakar:* "Either carries on business or is resident." These are the words in the Nehru Committee's definition.

*Lord Reading:* Yes, but that does not answer my point. "I may read that and I do read it to mean that if a man is living here and carrying on business in India there is to be no distinction. Is that also what he means?"

*Mr. Jayakar:* Yes. "Who being a subject of the Crown carries on business or resides in the territory of the Commonwealth." Therefore if he carries on business or resides in the terri-

tory of the Commonwealth that satisfies the test of the definition as laid down here.

*Lord Reading*: I am quite satisfied so long as the question is answered as I was putting it and I understand that is so.

*Mr. Jayakar*: For the purpose of carrying on business one may not be resident in the ordinary sense of the law.

*Lord Reading*: If I may put it perfectly clearly suppose A is living in this country and is trading with India. He is carrying on business in India but he is not resident there. As I understand it there is to be no discrimination against him any more than against a person resident in India. Is that right?

*Mr. Jayakar*: Yes. That would follow from the words employed in the Nehru Committee's Report.

*Sir Tej Bahadur Sapru*: Perhaps His Lordship will allow me to explain the origin of this after he has finished.

*Lord Reading*: That makes the position sufficiently plain for me and I accept that. It brings us to this, that certainly, in general, it is not intended that there shall be any discriminatory legislation or administration against British subjects. I understand that to be admitted. The only question is therefore how we are to put that as a formula to give proper protection. So far there is no difference of opinion. The result of all the discussion shows that there is a very great body of agreement.

Now there are two questions which I think arise upon that. One is: Should exceptions be made, and, if so, in what cases? And the other is: By what method should these rights be secured to the British? Now I find some difficulty in appreciating exactly the kind of exceptions that were in the mind of Mr. Jayakar and to some extent also of Sir Purshotamdas Thakurdas. That there are exceptions is obvious. They were spoken of as special cases or cases requiring special adjustment or special treatment. No limit is placed to them at all; therefore, if you have them unlimited your definition is of no use because you may have exceptions as often as you please. Therefore, it is obvious that you must have some limitation upon those special cases if your definitions and the principles which I have just stated are to be accepted as governing the relations in commerce between Britain and India.

Now, I have found difficulty in understanding for this reason. I quite follow the argument that where, for example, in future public utility undertakings or public concerns in which public money is to be invested or used, the Government of India may say: Well, we think that a company which is to get the benefit of the subsidy that we shall give or of the advantage that we shall give by some direct payment or use of money, must be a registered company in India with rupee capital, with a moderate reasonable proportion of directors, and with a reasonable and moderate proportion of Indian shareholders. It may be that I go further than some of my colleagues in thinking that that is not an entirely unreasonable proposition for the Government of India to put forward.

I am not sure that I am right in this, because it was sometimes difficult to follow, but I understood that Mr. Benthall raised no objection to cases of the kind to which I have referred.

*Mr. Benthall:* Except in the case of shareholders, where the Committee itself turned down the proposal on practical grounds and on the grounds that it would be a restriction on Indian shareholders, and probably on the value of their shares, and for other reasons.

*Lord Reading:* I was going to refer to that. I agree. Of course, it is a question of reasonableness.

*Mr. Benthall:* Yes.

*Lord Reading:* I was going to make an observation upon that. It seems a little absurd to say there must be a proportion of shareholders, because they either may or may not wish to invest their money; and it seems ridiculous to say you must have a proportion of Indian investment when they may not be willing to put in their capital. I do not suppose for a moment that would trouble the Indian Government. What they really want is to feel that if there is a company of this kind to which special circumstances do attach, there should be special conditions of the character to which I have referred.

Now, of course, in what I have said I was dealing—and, I think I am right in saying, in what the Committee at that time were considering, they were dealing—with future companies and not with companies already in existence. Obviously it would not be right to go back upon rights that have been given; but in those future companies and within those limitations I myself do not see that there can be any particular objection.

I do not regard that myself as discrimination where it is dealing with these public utility concerns. It is a different character of legislation, and in any event I do not myself desire to press any further than that. I think I agree entirely with what Mr. Benthall has said on the subject. I am glad that the European Association have taken that view. I think it came up for discussion during the time that I was Viceroy, and my recollection—but I confess I have not looked it up—is that we accepted the views of the Committee as regards future undertakings.

Now, that is an instance of a case that I follow. I cannot help pointing out that that never can come, and it never is intended to come, under discrimination. Where I felt some difficulty, and still do (and it is not lessened by what Sir Purshotamdas was saying this morning), is in reference to what was called undue competition. That troubled me. As I understood from what Mr. Jayakar said, his view was that if there was undue competition of a powerful company against a small company that was trying to make its way, then there were special circumstances which could be dealt with in a special way. Well, I hope that will not be persisted in, because to my mind that is the danger-spot in the whole of the discussion which is now proceeding.

*Mr. Jinnah:* Quite right.



*Lord Reading:* It is the real danger for this reason, that when Indian politicians speak of anything in the nature of special circumstances in this connection they are not thinking of discriminatory legislation or of discriminatory administration by that name, or which would appear on the surface; not for a moment. That is not how they would proceed. What they have in mind, and what I rather understood when these observations were made both yesterday and to-day, is—suppose you have a powerful British concern, either a firm or a company, with large capital, with a business which it has built up over a great many years in India, and that that is making profits in India, and there is a small Indian concern which is trying to compete with it, but which has the disadvantage which is inherent in every small firm in competing with a larger—there are some advantages too, but there are disadvantages, as we all know, in this country as well as in India—now if, as I understood it, it meant that then there could be discriminatory administration or legislation in the sense that you could penalise in some way that British powerful concern in order that you may enable that Indian concern to flourish, if that is what it meant then I would oppose that root and branch. I think that is fundamentally wrong in principle. I think it hits straight at the principle of discrimination, and if it is intended to do it I think it would be unfair to the British who have those rights there now, and who ought to have those rights continued.

*Mr. Jayakar:* I was speaking of cases which I had in view. I did not mention them because I thought the discussion would go in an entirely wrong channel if I mentioned those cases, but I have cases in view where that powerful concern adopts unfair means towards a smaller Indian concern. I had those cases in view—not legitimate competition, but where a big concern adopts unfair means to carry forward its concern.

*Lord Reading:* I am much obliged. I am just going to deal with that side of the question. I was going to say this, that if it leads—as some observations did undoubtedly lead, including some that were made this morning—to the suggestion that there is what is called unfair competition, then the general law of the land applies. You cannot have a law directed against one particular company or one particular concern; you must have the general law of the land made applicable to them. If it is unfair competition, then it is unfair competition not only in that trade but in every other trade, and if it is unfair competition and you want to legislate against it, then you must legislate against it for all trades. That is the point that I want to make quite clear.

You may even say that it happens that in one particular trade and not in others that to which you take exception goes on. In such a case if it is unfair you are obviously entitled to legislate against it, and no one would ever make a suggestion to the contrary; but if it is merely unfair because the concern happens to have achieved its great and powerful influence either by its capital or by its reputation or by the associations that it has made,

then obviously you could not attempt and you ought not to attempt to legislate against it. However difficult it may be for an Indian nascent company to progress where there is a powerful company in the same line next door to it, it may be, you cannot legislate against it and you cannot take administrative acts against it; competition must be the law that must determine the matter; you cannot help it.

That is why I refer to this as the danger point, because some of the observations led me to think that the desire was, or might be, that there should be either legislation or administration which would enable the small Indian concern to be at an advantage as compared with the British concern which happened to be the more powerful one. If that ever is or was the principle advocated, I do hope that the result of our discussion will be that that will be given up. It obviously ought not to exist. I think that was what was in the mind of the Government of India when in their Despatch they made the reference to which Sir Purshotamdas referred this morning. He said "What has aroused their fears is the tendency displayed in certain quarters to advocate measures designed to secure the rapid development of Indian enterprises at the expense of the British concerns already established in this country".

Now, I would go just one step further than that. I draw no distinction myself between "British concerns already established in this country" and British firms or persons who wish to carry on business in the country in the future. I should have thought they had just as much right, upon the lines upon which we are proceeding, as the Indians would have to come to this country and carry on business here, where they have complete freedom, just as we claim there must be complete freedom for the British subjects who go to India.

Now, Lord Chancellor, I do very respectfully draw the attention of my Indian colleagues at this Conference to the danger that arises from those circumstances. I am not referring to unfair competition. Of course that could be dealt with and may be dealt with, but at the same time under the guise of what is called unfair or undue competition there must not be legislation introduced or administrative acts which would benefit the Indian smaller concerns at the expense of the more powerful British concerns.

*Pandit M. M. Malaviya*: Would that stand in the way of the Indian Legislature taking special measures to give encouragement to Indian industries by protection or bounty?

*Lord Reading*: To the indigenous trade of course it would not. I gather that what is meant is that a trading body doing particular things would get the benefit of the bounty. It would not make any difference whether it was Indian or British.

*Pandit M. M. Malaviya*: In the definition suggested of citizenship a Britisher resident in Great Britain and carrying on trade in India would be included.

*Lord Reading*: Yes.

*Pandit M. M. Malaviya:* That brings in all Britishers trading in India. Many are powerful concerns. Indian industries at present cannot compete with them obviously and so India desires to give them special encouragement and protection. Would it be possible for India to do so? Would it not be right? So long as there is legitimate competition we do not want discrimination against Britishers but this second proposition of Your Lordship stands on a different footing.

*Lord Reading:* With regard to that the answer is to be found in what happened in a particular instance with which we are all familiar. I need not refer to it in detail. We know what happened with regard to the steel industry and what was done there for that very reason.

*Pandit M. M. Malaviya:* We did not exclude British firms in India from the benefit of that.

*Lord Reading:* May I say that I am very conscious of that because naturally I had some hand in it, at any rate in assenting? There never was any question of it. I do not think there was any idea of merely confining it to Indian enterprises—that is to enterprises carried on by Indians as distinct from British.

*Pandit M. M. Malaviya:* That is not the point. In your definition a Britisher carrying on trade in India while he resides in this country would be included and if no encouragement or protection could be given to an Indian industry which might be to the disadvantage of a business concern carrying on business with India and residing here then we are not free to protect our own industries and to develop them.

*Lord Reading:* I am pointing out that that was done when a case arose when there was an industry in India which could not compete as it was thought with some foreign countries including this country. Then certain measures were introduced for the purpose. That I think is the answer and there I must leave it. I think myself that that is the way in which obviously it can be met. All I desire to do is to deal with this matter of general principle. If one begins to discuss specific cases it would take a very long time. I have drawn attention to what I conceive to be a grave danger of rather loose interpretation of the words "unfair competition". I think that that has to be provided against.

Now the question that remains for me to deal with—so far as I am aware the only question—is the method by which those rights are to be secured. I am rather inclined to Mr. Jayakar's view. I would prefer if we could get it, a convention by agreement. If we could get a convention by agreement it would be better but I should object strongly to a convention which had to be passed by the new Legislative Council or Assembly after the constitution had been granted. To my mind it is essential that this should form part of the constitution. It is from our British point of view vital to the constitution; and may I just remind

you, when you are stipulating or suggesting that any question of this kind must be dealt with by the Legislature there, that the constitution has to be passed by the Houses of Parliament here? And I do not myself envy the position of the Minister, whoever he may be or to whatever party he may belong, if by that time there are any parties left, if by that time we have not all agreed. I still repeat what I was saying: in view of what has happened and that we have been working on this question together. I still say, if there are parties left on this question, which I do not believe, then the Minister, who would go to Parliament and tell them that in the constitution he is curtailing the rights which hitherto British traders have had here or in India, would hardly meet with a very favourable reception, and I do not think it would be a very ingratiating way of introducing this new constitution which, we all so ardently hope, will really remove the kind of distrust and suspicion which has existed hitherto, and will put us on a different footing, enabling us to work cordially together and in the closest collaboration.

Now, My Lord Chancellor, having said that, may I just refer to the various methods that occur to me of carrying out what is now required? That is the enunciation and enactment of the principle to which reference has been made and which has received complete assent here. The only points between us, as far as I have understood hitherto, are some as it seems to me very very minor questions of exceptions, and as to how you are to frame your legislation so as to enable certain exceptions to be made.

Now, of course, the one method is by adopting a formula such as we have here which perhaps—indeed I may say certainly—would not quite do in its exact form for a Statute, but which does lay down a very definite principle. That is paragraph 14 at page 49. As I have said I would much prefer that the appropriate convention should be made, because it involves and implies by its very term an agreement. We are so near agreement, and, as Sir Purshotamdas Thakurdas has said this morning and as I have understood from outside, almost really at the point of agreement, that I am sorry and shall be sorry still if in the end we do not reach what is a definite agreement, which would then have to be put into shape. But if we have not a convention which can be scheduled to the Statute—which is to my mind the only way of doing it—then it would be necessary to have the clauses in the Act with reference to regulations, or whatever they may be termed, which would have to take the place of the convention, and which again I would put into a schedule of the Act and therefore give it statutory effect. And here I am glad that we are dealing with the subject upon which there is so very little difference of opinion that really, once we have discussed it as we have been doing here, there ought not to be any real difficulty.

Then further I would put under the Statute, as we have already said again and again, the power to the Governor-General, not only the power but the obligation to protect minorities. Whether

the minorities are Muhammadans, Sikhs, Depressed Classes or Europeans, we have always stipulated, and as I have always understood it has been accepted by this Conference, that there should be that power not only entrusted to the Viceroy but exercised vigilantly by him. Now, in that way he would have the power of intervening if there was any oppression of the Europeans by discriminatory legislation. He could, of course, interfere and either not give his assent or reserve the assent for the signification of His Majesty's pleasure. That is another way of doing it—that is to say, it is an additional protection which would be given.

I think I have now dealt in substance with the various questions that have been brought forward. I might also refer to one thing to which I do attribute importance. There is also the recourse to the Federal Supreme Court, which could be resorted to wherever any subject thought that he had a right of complaint.

That, My Lord Chancellor, shows what the powers are that would be left; and an additional thing that I mention, and only mention because I prefer myself to find all the powers and obligations on the Governor-General in this respect in the Statute, is that it may be necessary in the Letters of Instruction either to the Governor or to the Governor-General to make reference to them. Those are matters which will, of course, have to be considered by those who will be responsible for drafting the Act.

I have not referred in any way to the banks or insurance companies, for the reason that I think all that I want to say is covered by the general observations I made earlier in reference to unfair competition and the distinction that I drew between a large company and a small company that is trying to compete with it. I think you have to be careful. The last thing that we want to get into the minds of persons in this country or in yours is that by means of anything that may be done here it would be possible, if anybody ever thought it desirable, to act inequitably to the British concerns that have instituted themselves in India by giving these advantages so as to make smaller Indian concerns able to compete where perhaps they may not now be able to compete because of the special advantages that the British concern has from long association. But I do not want to repeat that. It covers all the matters that were referred to about the insurance companies and the banks and exchange banks, and I hope that we shall be able to arrive in this way at a conclusion which will be satisfactory to all of us; and certainly nothing is to me more satisfactory than that it should be established, as it has been quite clear from our discussion here, that there is no desire to discriminate, and that, indeed, those Indians who have spoken and many of those who have not spoken this time but with whom I had discussions last year, set out with the idea that they want to deal fairly and justly with both British and Indians, making no distinction, and the point on which I want to lay stress is that just as we here throw everything open—right of entry, right of trading and all other advantages—so we claim exactly the same

thing in India for the British subject, and so, as I am glad to see from all the various documents that have been referred to and from the observations made, no question can arise between us as to the right of the British subject to trade in India in the circumstances that have been described.

Lord Chancellor, no doubt it is not easy to arrive at the exact solution in point of drafting in a Bill, but I do think that, with the goodwill that has been established here and with the consensus of opinion that exists amongst us, there ought to be no difficulty in arriving at conclusions which will receive the general assent of this Conference, which will commend themselves to the Indian people when they understand them, and which will stand at any rate as an embodiment of what is just and fair, as much desired by the Indian community as it is by the British.

*Chairman:* I think we are all very grateful to Lord Reading for what he has said, and, if he will allow me to say so, his unique experience, first of all as Lord Chief Justice of England, then as Viceroy of India, and then as Foreign Secretary, gives to his words a weight which would lead none of us to desire to differ from them unless we were very sure to the contrary. I am sure we are all very grateful to him, having regard to his unique experience and knowledge, for putting his advice before us.

*Mr. Jinnah:* As perhaps forming a minority of one, will you allow me, Lord Chancellor, to give a personal explanation with regard to what has fallen from Lord Reading? I am speaking for myself, and I do not want my position to be misunderstood by anybody, or deliberately misrepresented, either in this Conference or outside this Conference.

I have never refused to subscribe to the general principle that the British interest in India should be fairly and justly treated, but my difficulty has always been, and is now, with regard to the exceptions which are not yet specified or formulated. My difficulty has been with regard to the proposed agreement between Great Britain and India to which Lord Reading referred by way of convention before the constitution comes into operation; and, that being my difficulty, I think Lord Reading will at once admit this, that, as he himself said, this is a very vital issue, and you cannot expect any responsible man to give his assent to a formula which is so vague unless it is thoroughly crystallised.

That is the reason why I was unable to give my assent to the clause to which we agreed here on the last occasion, and that is the reason why I am unable to give my assent now, although I may be a single individual here, and notwithstanding the rebuke of Lord Reading that it was not expected of me to be reasonable.

*Lord Reading:* You misunderstood me, Mr. Jinnah; I never meant that at all.

*Chairman:* I think the *esprit negatif* is a most valuable thing.

*Sir Tej Bahadur Sapru:* At the outset of the few observations that I am going to make, perhaps Your Lordship will allow me to express our gratification and sense of obligation to Lord Reading for the very fair and broad-minded manner in which he has dealt with this question this morning. I do not wish to traverse the entire ground which has been covered in the course of the discussion, but there are just a few points which have emerged from the discussion on both sides, and it is with regard to those points that I should like to make a few observations.

Now, My Lord, as one who must take his share of responsibility for the Report of the Nehru Committee, I should like to point out that this Report, and particularly that part of the Report which deals with the question of discrimination, was discussed by the members of that Committee at great length. We had at that time the advantage of the experience and knowledge of the late Pandit Motilal Nehru, and I can tell you that so far as this particular paragraph, paragraph 11, is concerned, it formed the subject of prolonged discussion between him and myself.

It was not by mere accident that we indulged in that language. It was the result of a very deliberate and prolonged discussion. that we recorded our conviction which is contained in this sentence on page 11:—

“ It is inconceivable that there can be any discriminating legislation against any community doing business lawfully in India. European commerce, like Indian commerce, has had to bear in the past, and will have to bear in the future, the vicissitudes inseparable from commercial undertakings on a large scale and no government in the West or anywhere else has been able effectively to provide a permanent and stable solution for conflicts between Capital and Labour. If, however, there are any special interests of European commerce which require special treatment in future, it is only fair that in regard to the protection of those interests, Europeans should formulate their proposals and we have no doubt that they will receive proper consideration from those who are anxious for a peaceful solution of the political problem.”

Your Lordship will observe that having laid down the general principle about discrimination in the sentence I have read we invited an opinion from European commerce in India. One line of criticism taken at that time was that although the sentiment contained in this sentence was perfectly reasonable yet they would like to have it reduced to a more concrete proposition. It was in pursuance of that desire expressed by European trade and commerce that we then met at an All Parties Conference at Lucknow and the definition read by Lord Reading this morning was incorporated. I may say that while the paragraph which I have already read out was written by me the definition which I am going to read was drafted by the late Pandit Motilal Nehru:—

“ The word ‘ citizen ’ wherever it occurs in this constitution means every person . . . . ; (c) or who, being

a subject of the Crown, carries on business or resides in the territories of the Commonwealth; or (d) who is naturalised in the Commonwealth under the law in force for the time being."

That was really introduced to meet the point of view of British commerce. After that there was some criticism again and this criticism came not only from the side of European commerce but from the side of Indian commerce. Accordingly a small sub-Committee was appointed and this definition of a citizen was still further modified. Lord Reading has not referred to it probably because it was not in his possession.

*Chairman*: I am very glad you are going to read it.

*Sir Tej Bahadur Sapru*: I will read it and perhaps it would be an advantage to read an extract from the speech of Pandit Motilal Nehru.

*Chairman*: Would you give me the date?

*Sir Tej Bahadur Sapru*: It is the proceedings of the All Parties National Convention held on December 24th, 1928.

*Chairman*: I have not got this.

*Sir Tej Bahadur Sapru*: It says:—

" Clause (3), which runs as follows, was taken up.

3. The word ' citizen ' wherever it occurs in this constitution means every person—— "

I do not read the rest; it is exactly the same as was read out by Lord Reading. Then:—

" Pandit Motilal Nehru moved that Clause 3 as recommended by the enlarged Committee be adopted. In moving the resolution he said that the clause as it originally stood was printed at page 101 of the main Report. It consisted only of two sub-clauses which now appeared as (a) and (d). What now appeared as sub-clause (b) was added by the Lucknow Conference. Sub-clause (c) had been added by the enlarged Committee for the reasons set out at page 27 of the Supplementary Report. This last addition was the necessary consequence of the adoption by the Convention of the resolution on Dominion Status. Unless this clause was adopted there would be no possible means available to the people of Great Britain or of any of her Dominions to become citizens of India. This would be an anomaly and give rise to a serious state of things. While Germans, Italians or other foreigners coming to India would have an opportunity to get naturalised and thereby become citizens of the Commonwealth of India no such means would be available to Britishers or the people coming from the Dominions. The latter were all in law subjects of the Crown and as such the naturalisation laws of the Commonwealth would not be applicable to them. That being so they would be permanently debarred from acquiring rights



of citizenship. This result would be quite inconsistent with the resolution passed by this Convention about the constitutional status of India in the community of nations known as the British Empire. While claiming to be on the same footing as the people of Great Britain and of the Dominions Indians could not in fairness deny to the latter rights and privileges which they themselves claimed."

Now this is not my sentence; this is Pandit Motilal Nehru's sentence.

This was merely a consequential amendment. Of course India enjoyed no such rights at all but they had passed a resolution in favour of Dominion Status and if India wanted equality in other Dominions she would have to concede the same equality to the people of those Dominions. If, however, they did not get the equality they claimed there would be no question of giving equality to others. But as he (the speaker) had stated such equality would come about automatically on their attaining Dominion Status and would not depend on the will or pleasure of anyone. But this would not prevent India from passing special legislation restricting the franchise as other Dominions have done. If India were admitted into this family of the Commonwealth of Nations she would no longer be foreign to those nations and they would not be foreign to her.

Accordingly a sub-Committee was appointed and this sub-Committee met on December 27th, 1928. I was a member of that sub-Committee and there were several members of the Congress on that Committee. This is what has not been read out:—

"For original clause (c) substitute the following:—

(c) Who being a subject of the Crown (1) ordinarily resides or personally works for gain, within the territories of the Commonwealth at the date of the commencement of this Act or"—

Now this is more important:—

"(2) fulfils the qualifications prescribed by the Parliament for the exercise of the rights of citizenship."

*Chairman*: That is December 27th, is it?

*Sir Tej Bahadur Sapru*: Yes, My Lord, that is December 27th.

*Sir Akbar Hydari*: Which Parliament is it?

*Sir Tej Bahadur Sapru*: The Indian Parliament:—

"fulfils the qualifications prescribed by the Parliament for the exercise of the rights of citizenship."

My Lord, I am free to confess that so far as this particular clause is concerned there is still room for improvement to cover all the ideas which have been exchanged since yesterday from this side to that side and from that side to this; but it seems to me that there is not very much room for such apprehension as has been expressed in regard to certain matters.

May I invite the attention of Lord Reading to the fact that the explanation added to the original clause 3 does not necessarily mean, cannot mean, was not intended to mean that England would be treated as a foreign country? The controlling words in clause 3 are :—

“ or who being a subject of the Crown carries on business or resides in the territories of the Commonwealth.”

Well, if an Englishman comes and carries on business or resides in India, then he cannot be treated as a citizen of a foreign country. Therefore the words “ foreign country ” used in the explanation were not, in my opinion, intended to apply to England; but it is just possible that exception may be taken to the use of those words on the ground of obscurity, and if that is the exception taken then I, for one, would not object at all to the position being made more clear.

There is only one more remark I will make in this connection. It was never the intention of the authors of this clause that by acquiring citizenship in India an Englishman would lose his own original citizenship in England. That was never our intention. So far as that is concerned, we say to Englishmen trading in India or carrying on business in India that it is only for certain commercial purposes that they will acquire a new citizenship. All the rights belonging to them as citizens of England will continue to belong to them. Their personal laws will apply to them. In fact, it will not even be a case of a change of domicile. It was only to place them on a footing of equality that this definition was introduced; but I am free to admit that there may be room for improvement, and if there is room for improvement I hope that such improvement will not be impossible to achieve. That is all that I would like to say with regard to this.

*(The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.)*

*Sir Tej Bahadur Sapru:* My Lord, before the Committee adjourned this morning I read out a passage from a speech made by the late Pandit Motilal Nehru. I wish to say one thing, and that very clearly; if there was one man in his generation who was a full blooded nationalist it was Pandit Motilal Nehru. With him nationalism was a burning passion.

*Chairman:* I am sorry he is not with us to-day.

*Sir Tej Bahadur Sapru:* He never masqueraded as a nationalist, he was a nationalist; and therefore, when I rely upon the speech of Pandit Motilal Nehru in support of that resolution, I present it to those who criticise last year's formula as the real reason and explanation of why those of us who were present last year decided to accept that formula.

I venture to submit that if that formula is examined in the light of the remarks of the late Pandit Motilal Nehru, which I

quoted this morning, it will be found that the formula which was evolved last year by the joint efforts of Lord Reading and Sir Hubert Carr and several of the Indians, among whom I find was Sir Phiroze Sethna—a man who ought to know everything about business—then there is very little room for criticism that the Indian case regarding commerce and industry was surrendered or given away by weak-kneed representatives. Therefore, I claim that it would be wrong and unjust to disturb an arrangement which was willingly accepted by the Europeans on the one side and the representatives of Indian commerce on the other side. I suggest that we should stand by that formula. While I do stand by that formula I also suggest to my friend, Mr. Benthall, and those whom he represents, to consider whether it would not be wise in their interests to supplement it by a proper and carefully devised definition of citizenship which would give them the same status as Indian-born subjects of His Majesty for the purpose of trade, business and commerce in India. I have also said that the definition of citizenship which we introduced in the Nehru Report was not intended by any means in the slightest degree to encroach upon their personal laws, or upon those rights of citizenship which belong to them as Englishmen by their birth. It may, however, be urged that there is room for improvement in the language and particularly in Clause 2. My submission is that if there is any room for doubt, Clause 2 can be so modified as to show clearly that the qualifications which are to be prescribed by the Indian Parliament must be consistent with and not inconsistent with everything that precedes it. That would put the matter beyond all reasonable doubt. The basic principle of this discussion is that laid down in the introductory part of the Nehru Committee Report and that is that there should be no discrimination whatsoever. It is a principle, the recognition of which has been demanded on the one side and conceded on the other and, indeed, if I may say so, Lord Reading was within his right in saying that on that principle there is no difference at all between one section and the other.

It may be that in the actual application of that principle difficulties may arise, and we know from actual experience that difficulties in regard to discriminatory legislation have arisen in actual practice in federal constitutions. But we also must bear in mind that we are providing in the constitution solutions for those difficulties. If unfair treatment is meted out to the British in India by any legislation, there is first of all the power of veto, and the power of the reservation of Bills for the pleasure of the Crown vested in the Viceroy; then, as Lord Reading has pointed out this morning, any person injuriously affected by any legislation or by any administrative action has got the further remedy of taking the matter to the Supreme Court or to the Federal Court, whichever you like to call it.

While, therefore, both Mr. Jayakar and I hold very strongly that there is no room for discrimination, and while we find support

for that view in the Report of the All-Parties Conference, which was signed by men like Pandit Motilal Nehru and others, we also hold that it is by no means inconsistent with that principle that India should have liberty to encourage, foster and support her own industries. The two principles are by no means exclusive of each other or inconsistent with each other; and I did not understand Mr. Benthall to say that he or those for whom he speaks would not give that liberty to the Indian Legislature or to the Indian Government of the future; the liberty to encourage, foster and support Indian industry, any national industry in which the Government of India or the people of India may in future be interested.

Lord Reading was pleased to refer to the case of unfair competition in industry. Speaking before Lord Reading and before Your Lordship, I need scarcely say that cases of unfair competition and the rights to which they give rise are by no means unknown to English law. Indeed, our notions of such cases are derived more from English reports than from Indian reports; when Lord Reading was speaking of that this morning I was reminded of a very famous case in which Lord Reading in his younger days as leader of the Bar appeared before the House of Lords and raised a celebrated argument in regard to what is unfair and what is not unfair competition. Cases of that character have occasionally risen in India during my own experience, and as trade and industry develop they are bound to arise in future. The remedy for the private individual will lie in the enforcement of legal rights in Courts of Law. Lord Reading also pointed out that if there is any calculated attack on any particular right by reason of discriminatory legislation, the proper remedy lies in introducing proper legislation. Therefore, so far as the question of unfair competition is concerned, I should not like that to be confused with the principle of discrimination.

Now, My Lord, I will not say anything more with regard to this subject. There was one other subject which was referred to by Mr. Benthall in his speech. That was that he demanded two further guarantees: first of all, he demanded that the sanctity of contract should be observed; secondly, he demanded that there should be a guarantee for the rights of property. Now here again I feel myself fortified by the Report of the Nehru Committee. I will invite your attention to the Supplementary Report of the Committee, which sums up the fundamental rights which were adopted at that time by the Conference that met at Lucknow, and Clause 4 (2) lays down as follows on page 32:—

“No person shall be deprived of his liberty, nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law.”

Then comes another clause which is in italics there:—

“All titles to private and personal property lawfully acquired and enjoyed at the establishment of the Commonwealth are hereby guaranteed.”

Now, guarantees like that with regard to property have been given in some of the most advanced post-war constitutions, and I will only venture to say this much, that this portion of clause 4 (2), which is in italics, was introduced after a heated discussion at Lucknow, because there were certain members of that Conference who did not want any guarantee of that character to be given. That Conference was attended by leading Taluqdars and Zamindars of Oudh, who came and saw me and Pandit Motilal Nehru and others, and demanded that their rights of property should be guaranteed, and said that they would feel very unsafe in the present circumstances of India if those guarantees were not given; and knowing as I do what sort of wild cries have sometimes been raised on public platforms I think that they were justified in demanding that such a guarantee should be given. I therefore ask Your Lordship to accept not the rash advice of Mr. Benthall and myself but the clause which was accepted by a body of full-blooded nationalists in Lucknow, and I therefore ask that this clause should be accepted:—

“All titles to private and personal property lawfully acquired and enjoyed at the establishment of the Commonwealth are hereby guaranteed.”

Similarly, Your Lordship will find, as an offset against this, that when the claim of the tenants was put forward the Conference provided, in clause 4, in the last sub-clause but two, numbered (xvii):—

“Parliament shall make suitable laws for the maintenance of health and fitness for work of all citizens, securing of a living wage for every worker, the protection of motherhood, welfare of children, and the economic consequences of old age, infirmity and unemployment.”

Then come the italicised words:—

“and Parliament shall also make laws to ensure fair rent and fixity and permanence of tenure to agricultural tenants.”

I also stand by that. It is not that the Nehru Report espoused the cause merely of landlords and property owners, but it also took deliberately into consideration this particular clause, which was introduced there at the instance of some of the younger representatives of nationalism.

*Chairman:* Do you suggest that that particular clause should find its way into a federal constitution?

*Sir Tej Bahadur Sapru:* Which clause, My Lord?

*Chairman:* The one you have just read out—“Parliament shall make suitable laws for the maintenance of health”, and so on.

*Sir Tej Bahadur Sapru:* No, it will have to be modified, because that will have to be worked out by the Provincial Councils. The question of the rent and the fixity and permanency of tenure will not be within the jurisdiction of the Federal Government or

of the Federal Legislature. That will be a matter which will appertain to the Provincial Councils.

*Chairman* : Of course, you heard what Mr. Joshi was saying yesterday about that. What is your view about that?

*Sir Tej Bahadur Sapru* : If Your Lordship would like me to say something with regard to that I will do so.

*Chairman* : Yes, it is a very convenient point, because you were just reading it.

*Sir Tej Bahadur Sapru* : With regard to that, may I point out to Your Lordship here that the fair rent and fixity and permanency of tenure here has no reference to Labour such as was referred to by Mr. Joshi? It has reference to the agricultural population in India; and it is for that reason that I say that the enforcement of this rule, will be rather within the jurisdiction of the Local Councils, the Provincial Councils. than within the jurisdiction of the Federal Government.

With regard to Mr. Joshi's point, may I deal with that at this stage?

*Chairman* : Yes, I should be much obliged to you if you would.

*Sir Tej Bahadur Sapru* : So far as Mr. Joshi's point is concerned, I entirely agree with him that Labour legislation should be within the jurisdiction of the Federal Government and of the Federal Legislature, not merely because it is legislation of a humanitarian character and legislation which will deal with social welfare and things of that kind, but because at times it will be necessary for the Government of India to implement international obligations into which it will enter as it has entered into them in the past.

Further, it is desirable that there should be some uniformity of legislation and uniformity of standards in regard to those material requirements which Mr. Joshi had in view for the purposes of Labour. So far as all that is concerned, I am entirely in agreement with Mr. Joshi. I do not want to go into the details of the various questions raised by Mr. Joshi; I have sufficient confidence that the Legislature of the future will deal with the question of Labour in a spirit of sympathy, fairness and equity, as indeed it should deal with it, and therefore I do not want to dwell on that point any further.

There is only one other thing I want to say, and it is this. We are here for the purpose of settling as many points of difference between one section of the Conference and another as we can. There are some very big questions which have been engaging our attention, but of these the question which has been raised by Mr. Benthall is by no means the least. Personally, I thoroughly appreciate, and I know that many of us do appreciate, the spirit in which Mr. Benthall has raised that question; and subject, of course, to the right of India to develop her own industries, I do welcome the proposals made by Mr. Benthall generally, without

committing myself to every single detail of those proposals, and I do say that the time really has come when we should remove all those differences and come to a settlement with our European colleagues in India so far as this matter is concerned.

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*Sir Phiroze Sethna:* Lord Chancellor, Mr. Benthall commenced his speech yesterday with the observation that the subject with which we are dealing is supposed to be a very controversial one. If it is so it is our European friends who have made it a controversial question, because of the demand they have made, which demand has been backed up in the several representations made by the Associated Chambers of Commerce, to the effect that certain statutory safeguards or guarantees should be provided in the new constitution against discriminatory legislation.

The best answer to that from the Indian point of view is to be found in just one sentence in the rejoinder published in October 1929, by the Federation of Indian Chambers of Commerce and [Industry]. That sentence reads as follows:—

“ There can be no self-government in India if she is to be denied the power to devise and follow a national economic policy, including the right, if her interests require it, of making economic discrimination against non-national interests.”

We take our stand on this.

The European community, when they appeared before the Simon Commission, put forward the same demand. It might have been expected that, since the Simon Commission was composed exclusively of Britishers they would naturally sympathise with European mercantile interests in the country and the Commission's Report would have something to say to help them in the matter of this demand. Instead, all that the Report has said is as follows:—

“ The statutory provision would therefore have to be drawn so widely as to be little more than a statement of abstract principle affording no precise guidance to Courts.”

*Mr. Benthall:* May I ask a question? Did not that refer to all minorities?

*Sir Phiroze Sethna:* I am not quite sure.

Mr. Benthall observes that Indians must not forget the great advantages conferred upon the country by reason of the fact that Britishers have sunk millions of pounds in the country and by reason also of their skill and their great organising powers in working up industries, etc. I, for one, do not question that statement for one moment. I entirely endorse it, and am ready to admit that contact with the British has helped Indians to a great extent. But on the other hand I affirm with equal emphasis that the sinking of so many millions has certainly done untold good to

England and Englishmen. Therefore the advantage is on both sides. It has not been ascertained precisely what amount has been sunk by the Britishers in the country. One writer, however, recently stated that there are eight hundred and twenty-one companies with a paid-up capital of £528,000,000 registered outside India which are working in India. It is but natural, therefore, that the European community should require some assurance that their interests are not to be jeopardised in a self-governing India, but I claim that the fears they entertain are not justified. India to-day, we have always held, and rightly so, is a poor country. We have not so many millions to sink in other countries. But poor as India is, Indian capitalists have sunk some crores at least in Burma, and I do not think that if Burma is separated from India, as is threatened, the Indians will claim safeguards in the new constitution of Burma as our European friends are claiming in the proposed new constitution of India.

Mr. Benthall also observed that a large volume of public opinion proclaims that if political power is transferred to India, Indian interests will make use of it to the disadvantage of Europeans. I cannot understand why they should entertain such misgivings unless it be that they are afraid that because in the past Europeans have enjoyed considerable monopolies or privileges in commercial matters that perhaps Indians will try to retaliate. Reference was made by myself and others when we spoke at the Plenary Session last year to several instances of this kind. Mr. Jayakar referred to one yesterday. Sir Purshotamdas hinted at others this morning. I will not go back to past history, but I would like to draw the attention of this Committee to an event which took place quite recently—within the last few months, and even while the Conference has been sitting. Bengal is a maritime Province and a Province in which there are river systems and water-ways. The sea and these water-ways are largely used for passenger and goods traffic. There are what are known as river steamer lines which are mostly run by European companies. The two principal ones are known as the Indian General Navigation and Railway Company, Limited, and the River Steam Navigation Company, Limited. They were previously run by different European agencies; they are now run by one and the same European management. These companies have done so very well that they have always tried to stifle opposition and have succeeded in doing so by cutting down rates. Lord Reading this morning observed that if there is unfair competition we would be justified in introducing legislation. Legislation of this nature was brought forward in the Assembly by a very energetic member of that House, Mr. K. C. Neogy, five or six years ago. He proposed a Bill which is known as the Inland Steam Vessels Bill. Its object was that Government, with the help of an advisory Committee, should from year to year fix both minimum and maximum rates; minimum rates so that the stronger companies would not quote lower rates than the minimum, and therefore enable newly formed smaller Indian companies to exist: maximum rates



so that the passenger public might not be inconvenienced, if there was a combine, by being forced to pay much higher rates than would be necessary. This Bill was passed about two years ago, but the Government did not put it into operation until the beginning of this year. They did not commence it earlier for the reason that they thought it would be wise to allow these steamer companies to put their houses in order. As I have said, the Act came into force at the beginning of this year; but even before it came into operation these stronger companies tried to work in places, in narrow creeks, where they had never sent their boats previously, in order that when the Act was in operation they might be prepared and better able to compete with the smaller Indian companies that may be newly formed to work in these creeks. One such small company was formed and is known as the Pioneer Motor Boat Company. At the beginning of this year it met with opposition by the cutting of rates by the European companies. Under the Act which I have mentioned it complained to the Government of India. The Government of India, as provided in the Act, referred the complaint to a Committee. That Committee consisted of three gentlemen. One was Sir Narasinha Sharma, at one time a member of the Viceroy's Executive Council. The two other members were both Englishmen. One was Mr. Parsons, a member of the Railway Rates Advisory Committee, and the other Mr. A. Cassels, Commissioner, Dacca Division. The majority were Europeans and officials, but they had no difficulty in coming to the conclusion that the intention of the Joint Inland Steamer Company to cause the Pioneer Motor Boat Company, Dacca, to cease from carrying passengers on the line in question had been disclosed. So that even after the passing of this Act, these strong companies resorted to measures which by this Committee were regarded as improper, and Government have taken action on them.

*Mr. Benthall*: Is not that a justification for the power of legislation to which I have referred?

*Sir Phiroze Sethna*: Is there a justification for these companies, in spite of the existence of this Act, going behind it in the manner this Committee has disclosed that they have done?

*Mr. Benthall*: But that shows the power of the Government to disclose that, and, if that is being done, to protect the smaller companies.

*Sir Phiroze Sethna*: But that is being done every day. It is for that reason that I put forward this instance, and I will now put forward others.

To give you another instance. My Lord, some years ago a railway company, which was then company-managed and not State-mangaed, invited tenders for sleepers. The tender of an Indian firm was the lowest; their timber was supposed to be as good as that of any other tenderer, and yet the tender was given to an Australian firm. Questions were asked, but Government said

because it was a company-managed railway they had no control, and consequently nothing could be done.

I will just give one more instance. This House is aware of the concessions given by the Lee Commission in the case of European officers of the different Services. When they made those concessions to the Europeans, at the same time they accelerated the pace of Indianisation in the different Services. When the officers in the Imperial Services were given these concessions the European officers on the State Railways asked for the same. They were given them. Then followed a similar appeal from the European officers of the company-managed railways. That likewise was agreed to. When it came to the turn of the Indians to ask for the other recommendation made by the Lee Commission—namely, to accelerate the pace of Indianisation—of course, the State railways did so, but there was considerable opposition from the company-managed railways, and if I am not wrong there is still one company-managed railway which is doing nothing in the matter of the accelerated pace of Indianisation. These incidents happen every day, and even to-day, but we do hope that they will not happen in the future.

Sir Purshotamdas Thakurdas this morning made reference to the circular issued by the Government of Bombay. The Secretary of State for India, Sir Samuel Hoare, from the remark that fell from him, evidently questioned the existence of that circular. I am sorry that Sir Samuel Hoare is not present now.

*Chairman* : Well, if you think you could come back to that part of your speech in a minute or two, he is only out of the room for a short while, and I should like him to hear it; but if it embarrasses you, pray continue. He will certainly be back in a few minutes.

*Sir Phiroze Sethna* : He will be able to refer to my speech. He will not be able to contradict and, for this reason, I ask permission to quote from a speech which I made in the Plenary Session on the 20th November of last year and the passage is at page 163 of the proceedings of the Conference.

*Chairman* : I am sure he would not contradict that.

*Sir Phiroze Sethna* : I only quote this to show that I am not speaking without the book.

*Chairman* : I am sure you are not. Perhaps you will just read it, then.

*Sir Phiroze Sethna* : What I said was as follows :

“ Let me refer to an instance which occurred in India less than six months ago. I do not know whether it was of their own instance, or whether it was with the permission and knowledge of the Government of India, that the Government of Bombay issued a circular from the Central Government Press of Bombay, which they broadcasted by the thousand. in which, in order to meet the boycott movement,

they deprecated every Indian commercial enterprise. I will quote but one sentence in regard to banking. It says:—  
 ‘British banking is the mainstay of our banking system in India. It provides wide facilities and the strongest security. Why should people in this country ignore these secure concerns in favour of much less stable ones?’ ”

Sir Samuel Hoare wanted a copy of that circular. I am sorry that I have not it with me at the moment, but I have carefully preserved it, and I could, if desired, send it to him after I return to India.

*Chairman*: But I am sure that Sir Samuel Hoare would accept it from you. He will not want a copy.

*Sir Phiroze Sethna*: Thank you, My Lord. Then I will not pursue the matter any further.

Now, My Lord, Mr. Benthall observed—I am quoting his words—“What we ask we concede. The Indian subject of His Majesty or of a State can come to this country and, as a British subject, the law excludes him from nothing that is lawful to a European British subject.” Lord Reading also put forward that same view this morning. All this is very right in theory, My Lord, but I should like to ask these gentlemen if this is really so in practice. Sir Purshotamdas Thakurdas mentioned the instance of the Baltic Exchange, where only two Indian firms have succeeded in becoming members, and not without very considerable trouble lasting for several years. Then there are the London Commercial Rooms, which are divided into several sections, and one section of which is known as the London Jute Association. In that Association so far only one Indian firm, a prominent member of which is at the moment a member of this Conference, has managed to secure membership. I know there are two others wanting to get in, but, though there is nothing in the rules to exclude Indians, these Indian gentlemen find great difficulty in getting anyone either to propose or to second them. Therefore I contend that while this may be sound in theory, in actual practice it does not exist.

Mr. Benthall quoted from Chapter XV of the Report of the Fiscal Commission to the effect that “the presence of foreign money is not considered detrimental to India’s interests,” and he also quoted from the Report of the External Capital Committee, which Committee was appointed some years later, to the effect that “the inflow of external capital is not only not objectionable in itself, but is a valuable factor in assisting the economic development of a country and in increasing its wealth and employment.” I entirely agree with these views expressed in both Committees.

So far back as 1916, when Sir William Clarke was Commerce Member of the Government of India, in the course of a speech supporting the appointment of the Industrial Commission he said: “The building up of industries where the capital, control and management should be in the hands of Indians is the special object

we all have in view.' If that was the object in 1916, that object continues to exist to-day; there is greater need for it now, fifteen years later.

The External Capital Committee recommended that in future companies which received help from Government must have their capital subscribed in rupees, a portion of the capital must be offered to Indians, a percentage of the directors must be Indians, and so on. I understood Lord Reading to favour those proposals in the course of his remarks this morning, but I think Mr. Benthall does not entirely agree in regard to offering any percentage of the capital to Indian investors. I certainly think the Government of India would be justified, for the sake of the Indian investor, in asking the promoters of such companies to offer a fair percentage of the capital to Indians, but I quite realise that what is sometimes asked for by my Indian friends is both impossible and unworkable, namely that the percentage, say 50 per cent., should in the career of the company be for all time a fixed one. That, as I say, is absolutely unworkable and is not in the interests of the concern itself nor in the interests of the investor, because if you held this capital in water-tight compartments for Indians and for Britishers, neither of them would have a fair chance of selling their holdings, and the company would not do as well as it otherwise would.

But I will certainly make this recommendation that any European company starting with rupee capital in India in the manner suggested might be asked to offer in the first instance 50 per cent. of its capital to Indians. If they take it, well and good. If they do not then it will be perfectly open to those Europeans to offer it to whomsoever else they like. If Indian investors invest to the extent of 50 per cent. in the company, it stands to reason that if the company is successful they would try to secure more shares in the concern. But to hold them in water-tight compartments is by no means feasible and ought to be deprecated.

Again, My Lord, we have always held, and rightly so, that India has not enough money. We must admit that at the present moment perhaps we do not equal our European friends in the matter of organisation, in skill and also in the matter of technical education. Therefore I, for one, hold that it is best to co-operate with them and to see that they come even in larger numbers than at present, with such reservations as I have already explained. There may be instances where some European firms control machinery which we could not get elsewhere and it would be suicidal on the part of India to prevent such Europeans doing business in India—again I repeat with such reservations in regard to capital, etc., as I have stated.

Much has been said in regard to the amended clause 14 in the Minorities Report and much discussion has hung around the word "generally." I may be permitted to mention that it was at my instance that my Indian colleagues on that sub-Committee requested

our European friends on the same sub-Committee to include the word "generally." The word "generally" was inserted before the word "agreed," thus indicating that while "generally" there should be no discrimination, it was understood by implication that in particular cases we considered ourselves free to discriminate. The placing of the word "generally" immediately before the word "agreed" has probably misled some into thinking that it related to the word "agreed" and not, as we intended to the words "there shall be no discrimination." There is no doubt about this, and I think my European friends also hold the same view.

Indians have no desire whatever to injure the legitimate interests of the European commercial community. On the contrary, provided there is a satisfactory political settlement Indians will welcome European capital and skill in the development of India's resources. I think it is a mistake to treat this question as one of racial or commercial discrimination. There is no discrimination. There is only a matter of equalisation. There is common ground that in the past Europeans have had far wider scope than Indian merchants. Therefore if in the future Government of India subsidies are given and help extended to Indian organisations exception should not be taken to the same. Until we are able to consolidate our internal wealth and provide for its utilisation for the country's economic development we recognise the value of external capital as a factor in assisting that development. At the same time our policy must be directed towards stimulating the flow of capital from internal sources. As this must be our first concern we must be able to take any measures we consider desirable or necessary to foster and give preference to Indian investors. If that is discrimination between the British commercial community and Indian-born subjects then we must be free to take such action as is contemplated in the Report of the External Capital Committee and I would mention that the European members of that Committee were Sir Basil Blackett, then Finance Member, and Sir Charles Innes, the then Commerce Member, who is now Governor of Burma, who were both officials, while Sir John Bell and Sir Walter Wilson were the two non-official European members. We must claim the right to discriminate in the interests of our own people when we find it is in India's interest to do so. That does not mean to say we have any desire to discriminate against Europeans or British traders in India.

All it means is that we cannot forego the right, unqualified in any way, to shape our economic policy in the interests of Indian nationals. If at any time we do so, it can only be in very exceptional cases; and if our European friends claim that this power should not rest with the Legislature and they desire that they may have the right to appeal to another tribunal, such as the Supreme Court or the Federal Court, I do not think any sensible Indian would oppose such an application.

Therefore, while perfectly willing to assure the British commercial community in India, and also for that matter all other non-Indian communities, that we have no intention of injuring their legitimate interests, we cannot possibly accept the principle that the autonomy of a self-governing India should in the matter of commercial policy be in any way inferior to that of other free people, whether they be free as an independent nation or a self-governing Dominion.

In the course of the discussion which preceded the agreement on the amended clause 14 the argument was advanced that no discrimination could be permitted between one British subject and another in India; but what is the position, My Lord, in regard to Indians in the Dominions and certain British Colonies? There there is discrimination galore. How unreal is this British citizenship if such discrimination is permitted in so many parts of the Empire. Also, while on the question of citizenship, if an Indian citizenship were created as suggested in the amended Nehru Report, and supposing the Indian States for some reason refused to come into it, you would have a position where it would be legitimate for the Federal Government to discriminate against an Indian in Indian India, but not against an Englishman in Bombay or Calcutta. Citizenship may be an ultimate solution, but until that time comes India cannot permit any limitation of her power as an autonomous people to discriminate in favour of what she regards as Indian interests.

No assurance, however carefully worded, no statutory safeguard, will be of any use unless behind it there is the good will of the Indian people. The recent boycott provided an important example of discrimination. There might be a statutory or other safeguard for the British mercantile community against discrimination, but what use would that be if circumstances such as unfortunately obtained last year and earlier this year were repeated at any time in the future?

Again, My Lord, my European friends will admit that whatever safeguards are introduced will be only temporary, that is to say for the transition period. If, therefore, it is proposed to introduce safeguards which will be regarded as irksome by Indians, then when there is complete self-government in India the Legislature will try to get rid of them much quicker; but, what is more, the tension between the two communities will remain as severe as unfortunately it has been for the last two years. There can only be one safeguard against discrimination for all times; that safeguard is good will and co-operation. If that has been absent in the past it is in some measure due perhaps to the position of privilege enjoyed by our European friends in India. Mr. Gandhi has said that he wishes them to cease to be rulers and to become friends. He further said that as friends they cannot claim privileges. He adds that one gives guarantees to enemies, not to friends. The future of the European community in India really

depends on the extent to which this community is prepared to identify itself with India's interests, and to the extent to which Europeans in India are prepared to regard themselves as partners. This we hope will be brought about as the result of the present Conference.

What England needs most is the maintenance and the continuance of her trade with India which is her largest market, and this will be sufficiently safeguarded and secured, even in a self-governing India, if our country is now released from the apron strings by which it has been tied for so long to Great Britain.

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*Mr. Gandhi:* Lord Chancellor and friends, I would like to tender my congratulations to Mr. Benthall on his very temperate statement, and I wish that he could have seen his way not to spoil that admirable statement by importing two sentiments. One sentiment expressed by him was practically that Europeans or Britishers claimed what they are claiming because of their having conferred certain benefits on India. I wish that he could have omitted this opinion, but having expressed it there should have been no surprise expressed, as was expressed by Lord Reading, that there was a courteous retort from Sir Purshotamdas Thakurdas, and now, as we have heard, reinforced by Sir Phiroze Sethna. I wish also that he could have omitted the threat that has been used in that statement on behalf of the great corporation that he represents. He said that the European support to the national demand was conditional upon Indian nationalists accepting the demands of the European community expressed by Mr. Benthall, as also, not stated in this statement, but we had it, unfortunately, a few days ago, the separatist tendency expressed in the demand for a separate electorate, and their joining that separatist combination about which it was my painful position to speak the other day. I have endeavoured to study the resolution passed at the last Conference. I want to read that resolution again, although you are familiar with it, because I shall want to say a few things in connection with that resolution:—

“At the instance of the British commercial community the principle was generally agreed that there should be no discrimination between the rights of the British commercial community, firms and companies trading in India and the rights of Indian-born subjects.”

The rest I need not read.

I am extremely sorry, in spite of the great regard and respect I entertain for Sir Tej Bahadur Sapru and Mr. Jayakar, to have to dissent from this sweeping resolution. I was therefore delighted yesterday when Sir Tej Bahadur Sapru readily admitted that it was vague and that it was susceptible of improvement. You will see the general character of this resolution if you will carefully study it. There is to be no discrimination between the rights

of the British mercantile community, firms and companies trading in India and the rights of Indian-born subjects. If I have interpreted this correctly, I think that it is a terrific thing, and I, for one, could not possibly commit the Congress to a resolution of this character, much less commit the future Government of India.

There is here no qualification whatsoever. The rights of the British commercial community are to stand on exactly the same footing as those of Indian-born subjects. Therefore it is not as if there is merely not to be any racial discrimination, or anything of that kind, but here the British commercial community are to enjoy absolutely the same rights as Indian-born subjects. I want to state, with all the emphasis that I can command, that I could not even endorse the formula that the rights of all Indian-born subjects themselves could even be guaranteed as equal. I shall show you the reason presently.

I think that you will readily grant that the future Government of India would be constantly obliged (to use the admirable phrase used just now by Sir Phiroze Sethna) in order to equalise conditions to do what the existing Government has neglected to do, namely, continually to discriminate in favour of the famishing Indians against those who have been blest by nature or by the Government themselves with riches and other privileges. It will be necessary for the future Government, perhaps, to provide quarters free for Labour, and the monied men of India might say "If you provide quarters for them you should give corresponding grants to us, although we do not require quarters of that nature." It would undoubtedly be discrimination in favour of poor people, and the monied men might then say, according to this formula, that it would be discrimination against them.

I therefore venture to suggest that this sweeping formula cannot possibly be accepted by us in this Conference when we are trying to assist His Majesty's Government—in so far as they will accept our assistance—in shaping the future constitution of India.

But having said this I want to associate myself completely with the British merchants and European houses in their legitimate demand that there should be no racial discrimination. I, who had to fight the great South African Government for over 20 years in order to resist their colour bar and their discriminating legislation directed against Indians as such, could be no party to discrimination of that character against the British friends who are at present in India or who may in future seek entry. I speak on behalf of the Congress also. The Congress too holds the same view.

Therefore instead of this I would suggest a formula somewhat on these lines, a formula for which I had the pleasure and privilege of fighting General Smuts for a number of years. It may be capable of improvement but I simply suggest this for the consideration of this Committee and especially for the consideration of European friends. "No disqualification not suffered by Indian-born citizens



of the State shall be imposed upon any persons lawfully residing in or entering India merely"—I emphasise the word "merely"—"on the ground of race, colour or religion." I think that this is an all-satisfying formula. No Government could possibly go beyond this. I want to deal briefly with the implications of this, and the implications of this, are, I am sorry to say different from the deductions that Lord Reading drew or sought to draw from last year's formula. There would be no discrimination in this formula against a single Britisher or for that matter against a single European as such. I propose here to draw no distinction whatever between Britishers or other Europeans or Americans or Japanese. I would not copy the model of the British Colonies or the British Dominions which have in my humble opinion disfigured their Statute Books by importing legislation essentially based upon distinctions of colour and race.

India free, I would love to think, would give a different kind of lesson and set a different kind of example to the whole world. I would not wish India to live a life of complete isolation whereby she would live in water-tight compartments and allow nobody to enter her borders or to trade within her borders. But, having said that, I have in my own mind many things that I would have to do—to repeat that expression—in order to equalise conditions. I am afraid that for years to come India would be engaged in passing legislation in order to raise the downtrodden, the fallen, from the mire into which they have been sunk by the capitalists, by the landlords, by the so-called higher classes, and then, subsequently and scientifically, by the British rulers. If we are to lift these people from the mire, then it would be the bounden duty of the National Government of India, in order to set its house in order, continually to give preference to these people and even free them from the burdens under which they are being crushed. And if the landlords, zemindars, monied men and those who are to-day enjoying privileges—I do not care whether they are Europeans or Indians—If they find that they are discriminated against, I shall sympathise with them, but I will not be able to help them, even if I could possibly do so, because I would seek their assistance in that process, and without their assistance it would not be possible to raise these people out of the mire.

Look at the condition, if you will, of the untouchables. The law has to come to their assistance and set apart miles of territory. At the present moment they hold no land; at the present moment they are absolutely living at the mercy of the so-called higher castes, and also, let me say, at the mercy of the State. They can be removed from one quarter to another without complaint and without being able to see the assistance of law. Well, the first act of the Legislature will then be to see that, in order somewhat to equalise conditions, these people are given grants freely.

From whose pockets are these grants to come? Not from the pockets of Heaven. Heaven is not going to drop money for the

sake of the State. They will naturally come from the monied classes, including the Europeans. Will they say that this is discrimination? They will be able to see that this is no discrimination against them because they are Europeans; it will be discrimination against them because they have got money and the others have got no money. It will be, therefore, a battle between the "haves" and the "have-nots"; and if that is what is feared, I am afraid the National Government will not be able to come into being if all those classes hold the pistol at the heads of these dumb millions and say: You shall not have a Government of your own unless you guarantee our possessions and our rights.

I think I have given sufficiently an indication of what the Congress stands for; of the implications of this formula that I have suggested. On no account will they find that there has been discrimination against them because they are English or because they are Europeans or Japanese or any other race. The grounds that will be applicable to them for discrimination will be also the grounds for discrimination against Indian-born citizens, and therefore I have got another formula also, hurriedly drafted because I drafted it here as I was listening to Lord Reading and as I was listening to Sir Tej Bahadur Sapru. The second formula that I have got with me is in connection with existing rights:—

"No existing interest legitimately acquired, and not being in conflict with the best interests of the nation in general, shall be interfered with except in accordance with the law applicable to such interests."

Here, too, I would explain shortly what I have in mind. I certainly have in mind what you find in the Congress resolution in connection with the taking over by the incoming Government of obligations that are being to-day discharged by the British Government. Just as we claim that these obligations must be examined by an impartial tribunal before they are taken over by us so should existing interests be subject to judicial scrutiny whenever necessary. There is no question, therefore, of repudiation but merely of taking over under examination, under audit. We have, some of us here, some of us who have made a study of the privileges and the monopolies enjoyed by Europeans, but let it not be merely Europeans; there are Indians—I have undoubtedly several Indians in mind—who are to-day in possession of land which has been practically given away to them not for any service rendered to the nation but for some service rendered, I cannot even say to the Government, because I do not think that the Government has benefited, but to some official; and if you tell me that these concessions and these privileges are not to be examined by the State I again tell you that it will be impossible to run the machinery of government on behalf of the "have-nots," on behalf of the dispossessed. Hence you will see here that there is nothing stated in connection with the Europeans. The second formula also is applicable equally to the Europeans as it is applicable to Indians, as it is applicable,

say, to Sir Purshotamdas Thakurdas and Sir Phiroze Sethna. If they have obtained concessions which have been obtained because they did some service to the officials of the day and got some miles of land, well, if I had the possession of the Government, I would quickly dispossess them. I would not consider them because they are Indians, and I would just as readily dispossess Sir Hubert Carr or Mr. Benthall, however admirable they are and however friendly they are to me. They may stand me fifty dinners, but they will not stand in the way of my dispossessing them. The law will be no respecter of persons whatsoever. I give you that assurance. After having received that assurance I am unable to go any further. So that is really what is implied by "legitimately acquired"—that every interest must have been taintless, it must be above suspicion, like Caesar's wife, and therefore we shall expect to examine all these things when they come under the notice of that Government.

Then you have "not being in conflict with the best interests of the nation." I have in mind certain monopolies, legitimately acquired undoubtedly, but which have been brought into being in conflict with the best interests of the nation. Let me give you an illustration which will amuse you somewhat, but which is on neutral ground. Take this white elephant which is called New Delhi. Crores have been spent upon it. Suppose that the future Government comes to the conclusion that this white elephant, seeing that we have got it, ought to be turned to some use. Imagine that in Old Delhi there is a plague or cholera going on, and we want hospitals for the poor people. What are we to do? Do you suppose the National Government will be able to build hospitals, and so on? Nothing of the kind. We will take charge of those buildings and put these plague-stricken people in them and use them as hospitals, because I contend that those buildings are in conflict with the best interests of the nation. They do not represent the millions of India. They may be representative of the monied men who are sitting at the table; they may be representative of His Highness The Nawab Sahib of Bhopal or of Sir Purshotamdas Thakurdas or of Sir Phiroze Sethna or of Sir Tej Bahadur Sapru, but they are not representative of those who lack even anywhere to sleep and have not even a crust of bread to eat. If the National Government comes to the conclusion that that place is unnecessary, no matter what interests are concerned, they will be dispossessed, and they will be dispossessed, I may tell you, without any compensation because if you want this Government to pay compensation it will have to rob Peter to pay Paul, and that would be impossible.

I am trying to humour you in order to present this bitter pill, for it is a bitter pill which has got to be swallowed if a Government as Congress conceives it comes into being. I have no desire to deceive you; I have no desire, in order to take away something from here, to deceive you into the belief that everything will be

quite alright. I want, on behalf of the Congress, to lay all the cards on the table. I want no mental reservation of any description whatsoever; and then, if the Congress position is acceptable, nothing will please me better, but if that position is not acceptable, if to-day I feel I cannot possibly touch your hearts and cannot carry you with me, then the Congress must continue to wander and must continue the process of proselytisation until you are all converted and allow the millions of India to feel that at last they have got a National Government.

Up to now, no one has said a word in connection with two lines which appear at the end of this resolution, namely:—

“It was agreed that the existing rights of the European community in India in regard to criminal trials should be maintained.”

I must confess that I have not been able to study all the implications of it. I am glad to be able to say that for some days I have been engaged in carrying on friendly—absolutely friendly—and private conversations with Sir Hubert Carr, Mr. Benthall, and some friends. I was discussing this very theme with them and I asked them to tell me what these two things meant and they said it was the same thing for the other communities. I have not ascertained what is the meaning of the same thing for the other communities. It means, I suppose, that the other communities also may demand their own jury. This refers to trial by jury. I am afraid I cannot possibly endorse this formula.

*Mr. Jinnah:* May I correct you, Mr. Gandhi? It refers not only to juries but to the tribunals, the tribunals which will try Europeans and Indians, and there are many other distinctions. It is not merely the jury.

*Mr. Gandhi:* I did not know that. That is why I said I had not studied it. If there is something more you will pardon my ignorance but I could not possibly be a party to such reservations. I think that a National Government cannot possibly be shut in by these restrictions. All the communities to-day who will be the future Indian nation must start with good will, must start with mutual trust or not at all. If we are told that we cannot possibly have responsible government that will be a state of things one can understand. But we are told there must be all these reservations and safeguards. It would not be liberty and responsible government but it would be all safeguards. Safeguards would eat away the whole of the Government. I was trying this morning to find something analogous and I came to the conclusion that if all these safeguards are to be granted and all the talk here takes concrete shape and we are told that we are to get responsible government it will be almost on a par with the responsible government that prisoners have in their jails. They too have complete independence immediately the cell door is locked and the jailer goes. The prisoners inside that cell about 10 ft. square or 7 ft. by 3 ft. have complete independence. I do not ask for that kind of complete

independence, with the jailers safeguarding comfortably their own rights.

Therefore I appeal to our European friends that they should withdraw this idea of safeguarding their rights. I venture to suggest that the two formulae that I have put forward should be adopted. You may cut them about in any manner you like. If the wording is not satisfactory by all means suggest some other wording. But outside these formulae of a negative character whereby there is no bar sinister placed against you I venture to say you may not—shall I say dare not—ask for more. So much with reference to existing interests and future trade.

Mr. Jayakar was talking yesterday about key industries and I propose to associate myself entirely with the sentiments that he expressed. I do not think that I need take up your time by talking of what importance Congress attaches to key industries. The Congress conception is that if the key industries are not taken over by the State itself the State will at least have a predominant say in the conduct and administration and development of the key industries.

A poor undeveloped country like India is not to be judged as a highly developed individualist is land like Great Britain may be. What is good for Great Britain to-day is in my opinion in many respects poison for India. India has got to develop her own economics, her own policy, her own method of dealing with her industries and everything else. Therefore, so far as the key industries are concerned, I am afraid that not merely the Britishers but many will feel that they are not having fair play. But I do not know what is the meaning of "fair play" against a State.

And then about coastal trade too, the Congress undoubtedly has the greatest sympathy with the desire to develop national coastal trade; but, if in the Bill about the coastal trade there is any discrimination against Europeans as such, I will join hands with the Europeans and fight that Bill or the proposal which discriminates against Englishmen because they are Englishmen. But there are the vast interests that have come into being. I have travelled fairly frequently up the great riverways of Bengal and I travelled years ago up the Irawaddy. I know something of that trade. By concessions, privileges, favours, whatever you call them, these huge corporations have built up industries, built up companies and built up a trade which does not admit of any opposition whatsoever.

Some of you may have heard of a budding company between Chittagong and Rangoon. The directors of that company, poor struggling Muhammadans, came to me in Rangoon and asked me if I could do anything. My whole heart went out to them, but there was nothing to be done. What could be done? There is the mighty British India Steam Navigation Company simply underselling this budding company and practically taking the passengers without any passage money at all. I could quote instance after instance of that character. Therefore it is not because it is a

British company. If it were an Indian company that had usurped this thing it would be the same. Supposing an Indian company was taking away capital, as to-day we have Indians who instead of investing their capital in India invest their capital or invest their monies outside India. Imagine that there was a huge Indian corporation that was taking away all its profits and investing them in some other parts of the world, fearing that the National Government was not going along a correct policy, and therefore in order to keep their money intact they were taking away that money outside. Go a little step further with me and say that these Indian directors in order to organise in a most scientific, finished and perfect manner brought all the European skill that they could bring there and did not allow these struggling corporations to come into being, I would certainly have something to say and have legislation in order to protect the companies like the Chittagong company.

Some friends could not even float their ships along the Irawaddy. They gave me chapter and verse in order to assure me that it became utterly impossible; they could not get their licences, they could not get the ordinary facilities that one is entitled to. Every one of us knows what money can buy, what prestige can buy, and when such prestige is built up which kills all the saplings, it becomes necessary then to use the expression of Sir John Gorst which he used forty-two years ago—that it then becomes necessary to lop off the tall poppies. Tall poppies ought not to be allowed to crush these saplings. That is really the case on behalf of the coastal trade. It may have been clumsily worded, the Bill. That does not matter, but I think the essence of it is absolutely correct.

About the citizenship, that is the last thing. Well, you have the definition from the Nehru Report. Naturally the Nehru Committee had to consider situations as they arose, and therefore there were several changes rung on the original description; but I would like this Committee to realise that the Nehru Report is—I am sorry to have to say it, but it is so—to-day a back number. Even the late Pandit Motilal Nehru was obliged to say that, not because we wanted to treat that Nehru Report as a back number. The Nehru Report is undoubtedly a compromise between several positions. Though not a member of the Committee I knew exactly what was happening, because I happened at that time to be in India, to be in touch with the members of the Committee, and therefore I know something of the history of that Report and how that Committee also came into being. I am not going to weary you with the details of the history of that Committee, but, as you will see, that Report is based upon the idea that we were to have Dominion Status. Well, the Congress has taken several strides further. The Congress had to forget that Report in connection with the Hindu-Muslim-Sikh formula, as it has been obliged to forget that Report about many other things. Although the Nehru Report is a creation, or the Nehru Committee is in the first instance a creation of the Congress, I am not able, therefore, to say that we will be able

to-day to swear by everything that appears there. Beyond that I do not want just now to go.

The definition of citizen is a terrific job. I could not possibly undertake on the spur of the moment to present, as I understand the Congress mentality of to-day, what will commend itself to the Congress or what will commend itself to me. It is, as I say, a matter on which I would like to confer with Sir Tej Bahadur Sapru and other friends and try to understand what is at the back of their minds, because I must confess that out of this discussion I have not been able to reach the heart of the thing. I have made the Congress position absolutely clear, that we do not want any racial discrimination, but after having cleared that position I am not called upon now to give a summary decision for the opinion of the Congress in connection with the definition of the word "citizen." Therefore I would simply say in connection with the word "citizen" that I reserve my opinion as to the definition entirely for the time being.

Having said this, I want to close with this remark. I do not despair of finding a common formula that would satisfy the European friends. The negotiations in which I was privileged to be a party are, I think, still to continue. If my presence is required I will still attend that little committee meeting.

The idea is to enlarge it and give it a little less informal shape and find out a common basis.

In spite of what I have said, I do not despair of finding a common formula, but having expressed that hope, I would again hark back to the point that, so far as I can understand it, I cannot think of any detailed scheme which could be incorporated in the constitution. What can be incorporated in the constitution is some such formula as this, round which all kinds of rights can arise.

There is no conception here, as you see, of doing anything administratively. I have expressed my own hope in connection with the Federal and Supreme Court. To me the Federal Court is the Supreme Court; it is the final Court of Appeal beyond which there would be no appeal whatsoever; it is my Privy Council and it is the Palladium of Liberty. It is the Court to which every person who is at all aggrieved can go. A great jurist in the Transvaal—and the Transvaal and South Africa generally have undoubtedly produced very great jurists—to whom I used to go for assistance when I was a youngster, once said to me, in regard to a very difficult case, "Although there may be no hope just now, I tell you that I have guided myself by one thing, or else I should not be a lawyer; the law teaches us lawyers that there is absolutely no wrong for which there is no remedy to be found in a Court of law, and if Judges say there is no remedy, then those Judges should be immediately unseated." I say that with all deference to you, Lord Chancellor.

I therefore think that our European friends may rest assured that the future Federal Court will not send them away empty-

handed, as we expect to go away empty-handed if we do not have the favour of the Ministers who are the present advisers of His Majesty. I am still hoping that we shall have their ear and get round their better side, and then we may hope to go away with something substantial in our pockets; but, whether we go away with anything substantial in our pockets or not, I hope that if the Federal Court of my dreams comes into being then the Europeans and everybody—all the minorities—may rest assured that that Court will not fail them, though a puny individual like myself may fail them.

*Chairman:* We are very much obliged to Mr. Gandhi for that speech. If you will allow me to say so, everybody must be impressed by the earnestness and sincerity with which he advocates his ideals, and I thank him very much indeed. Perhaps he will be good enough to give me those two formulæ.

*Sir Tej Bahadur Sapru:* I should like to ask Mahatma Gandhi to explain one part of his speech, in regard to which there is some doubt in my mind. Does he propose that the National Government of the future should examine and investigate the title to property of everyone, and if so would it be any title acquired within a certain period of time or not? What is the machinery he proposes to bring into existence for the examination of that title and does he propose to give any compensation at all, or that the National Government should simply expropriate property which according to his view or the view of the majority seemed to have been wrongfully acquired?

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*Mr. Gandhi:* If you will give me permission I will certainly answer those questions, which are very legitimate questions. I have really given my view. So far as I understand, it is not intended that the administration should do the thing: everything that is done will be above board.

It will be done by legal machinery. All these claims——.

*Sir Tej Bahadur Sapru:* That is what I want to know. What is that legal machinery to be?

*Mr. Gandhi:* I have not at the present moment thought of any limitation. I think that there is no limitation running against a wrong.

*Sir Tej Bahadur Sapru:* Under your National Government therefore no title in India is safe?

*Mr. Gandhi:* Under our National Government the Court will decide these things, and if there is any undue fear about these things, I think it is possible to satisfy every legitimate doubt. I have no hesitation in saying that generally speaking this is a formula which should be accepted. Where complaints are made that there are illegitimate rights acquired it should be open to the Courts of law to examine those rights. I am not going to say to-day



in taking over the Government that I shall examine no rights whatsoever, no titles that have been acquired.

*Chairman*: I think each of you will consider most carefully what the other has said and we will consider what both of you have said.

*Pandit M. M. Malaviya*: After the very exhaustive speech of the Mahatma Gandhi I do not propose to detain the Committee very long. I wish to make a few points quite plain. We are all agreed that there shall be no discrimination against Europeans trading in India and no wrong done to them. They shall be dealt with justly and fairly. On that point there is general agreement.

*Chairman*: Would you rather continue at our next meeting?

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*(The Committee adjourned at 4-20 p.m.)*

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PROCEEDINGS OF THE FIFTIETH MEETING OF THE FEDERAL STRUCTURE  
COMMITTEE HELD ON TUESDAY, 24TH NOVEMBER, 1931, AT 11-0  
A.M.

*Commercial Discrimination—concluded.*

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*Mr. Iyengar*: Lord Chancellor, I had not intended to intervene in the debate, but a number of points have been raised by Lord Reading's speech which still require clearing up; and though, as I hope, the Right Honourable Mr. Sastri will refer to some of them, there are still some more of them that I think it is well that the Committee should face before coming to an end of the discussion under this head. I should at the outset express my gratification that Lord Reading has now fully realised that both at the time of the Nehru Report and since, there has been no disposition on the British-Indian side to adopt or approve of any principle of racial discrimination. But then His Lordship has asked that we, in framing the constitution, should make provision against possibilities; and it is in defining these possibilities and the means of avoiding them that he has laid down propositions some of which, it seems to me, with all respect, it would be impossible for any self-respecting country establishing a responsible government to accept. He desires that the definition of citizenship should be wider than that discussed last year, so as to confer equality of rights and opportunities with the Indian-born citizens on Britishers temporarily resident in India for the purposes of trade, business or other occupation. He has gone further, and asked for the conferment of such rights on the absentee capitalists, individuals, firms or corporations, of Great Britain who send their capital to India for the purposes of profit, and the bigger they are the more they

shall be protected against legislation that may affect their rights or expectations.

*Lord Reading:* May I just interrupt for one minute? I hope it will not be taken that that summary of what I said is correct.

*Mr. Iyengar:* That is the impression that I got.

*Lord Reading:* Well, I cannot argue about it. The words I used are on the record. I never, for example, said that the bigger the corporation the more it was to be protected.

*Mr. Iyengar:* No; but I believe, My Lord, what was said was that there were very large interests which have been developed by big companies who have instituted themselves in India, and Your Lordship emphasised the importance of giving protection to them.

Now, speaking for myself, I think that while the proposition that protection should be secured by a properly defined law of citizenship is quite sound, I shall not agree that the definition shall make no distinction between the mere sojourner or resident and the citizens Indian-born or citizens domiciled after a defined period of residence. Much less could I agree that the definition should confer all rights of citizenship on absentee firms or corporations whose members will get, in addition to the full rights of their own British citizenship, additional rights of Indian citizenship guaranteed in this country by constitutional enactments. We have been told that the right is claimed on the basis of reciprocity. In so far as any such reciprocity exists by the operation of the existing Statute of naturalisation in England, my claim is that in this respect we and our future Government should be placed on exactly the same footing as other Dominions.

The Imperial Parliament—I speak subject to correction, but on the authority of Professor Keith—possesses the unquestioned right of defining the conditions which make a man a natural-born British subject. Residence in any part of the Empire is equivalent to residence in the United Kingdom as a qualification for admission to British nationality; but, while there is a law of British naturalisation, there are also Colonial laws of Colonial naturalisation, and after the British Nationality and Status of Aliens Act of 1914, naturalisation in the United Kingdom was no longer to confer the status of a British subject in any Dominion, unless that Dominion should adopt by legislation the provisions of that Act, and when it did so it conferred both Dominion and Imperial citizenship rights on those qualified for them.

But, My Lord, as Professor Keith has pointed out, of even greater constitutional importance was the action taken by Canada in defining, within the broader circle of British citizens, the narrower class of Canadian citizens. The term was first adopted for a limited purpose, that of immigration, when it was desired to make clear what persons were so connected with Canada as to be exempt from the provisions of the immigration legislation; but a wider use of it was rendered necessary by the creation of the Permanent Court of International Justice. Under the Statute of that body,

it is impossible for two nationals of one Power to be elected Judges; and as Canada, in virtue of its independent membership of the League of Nations, was also an independent member of the Court, it was necessary to secure that if a Canadian were elected he would not be refused a seat because a British member was elected.

Canadian nationality, therefore, is ascribed by an Act of 1921 to all Canadian citizens as defined in the Immigration Act of 1910, to their wives and to the children of Canadian nationals born out of Canada. Under the Act of 1910 a Canadian citizen is any person born in Canada who has not become an alien, any British subject domiciled for three years in Canada, and any naturalised alien who has Canadian domicile. Analogous provision for the nationality of the Union of South Africa was made by the Act of 1927, while the Irish Free State, by its constitution, conferred citizenship on all persons domiciled in the Free State on the coming into force of the constitution, if born there or in Northern Ireland, or if either parent was born in Ireland, and so on. I do not want to repeat it all.

Mr. Sastri has referred to the injustice and inequity of immigration restrictions on British Indians within the Empire, and the reservation for India of the right to resort to retaliatory measures. I want the principle of this right to extend equally to commercial and industrial matters. Mahatma Gandhi's readiness to consider preferential arrangements in respect of the difficulties of Manchester, for instance, will show that the problem of adjusting our mutual rights, obligations and equities so far as they now exist, is a matter which is not beyond the ability of our representatives to solve on the basis of perfect equality, freedom and goodwill.

But a convention based on an agreement is one thing, and an injunction in perpetuity, so far as the constitution can impose or enforce it, restraining the future Federal Legislature from ever meddling, not only with "existing and accruing rights," to use a phrase which is familiar in India, but with the expectations in investments by business connections, of concerns which have instituted themselves in India, even when national interests or emergencies demand it, is a different thing. It is a restriction of the rights of legislative sovereignty which no self-governing Legislature can accept with due regard to the future of the country, and which no Colonies, even when they have much less than full Dominion Status, accepted or recognised, and which the British Government at all times discouraged its Governors, by despatches and instructions, from seeking to enforce through their reserve powers.

For instance, if I may again quote Professor Keith, the powers of the Colonies in matters of the regulation of civil rights have also received generous acknowledgment by the Imperial Government, even in the very important and delicate set of cases in which Colonial legislation may be deemed to bear with undue severity on persons not resident in the area. From the earliest days of the control of Colonial legislation, it was necessary to insert clauses in

the instructions to the Governors to prevent assent to Bills aimed at non-residents, and this point has been raised infrequently since the grant of responsible government. It is important to note the attitude of the Imperial Government, which has deprecated intervention on this scope. As early as 1874 it adopted the attitude that it would not interfere with Canadian legislation affecting marine telegraphs, despite the allegation of the Anglo-American Company that its rights were being unjustly infringed. In 1898, the whole question of intervention in local matters, even when non-residents were affected, was elaborately dealt with by Mr. Chamberlain when he refused to defeat the determination of the Newfoundland Government to transfer to a private firm, for very inadequate consideration, a very large proportion of the assets of the Colony. Feeling in the Colony ran high, but the Secretary of State ruled unimpeachably that the grant of self-Government carried with it the authority to decide on such issues. He admitted that "if it was seriously alleged that the Act involved a breach of faith or the confiscation of the rights of the absent persons, His Majesty's Government would have to examine it carefully and consider whether the discredit which such action on the part of the Colony would entail on the rest of the Empire rendered it necessary for them to intervene." There have been similar cases in Australia, My Lord, but an even more striking case of refusal to intervene was seen in 1920, when the Queensland Parliament passed two Acts of a confiscatory character. This remarkable legislation was only secured through the device of swamping the nominated Upper House, a process carried out by an ex-Labour Minister, who had been rather absurdly appointed as the Lieutenant-Governor, and was at the time acting as the Governor in the latter's absence. One of these Acts repealed the assurances given to the tenants of the Crown that on the periodic appraisements of rents of pastoral leases or grazing licenses the limit of increase would be fifty per cent. The second Act provided for the acquisition on unjust terms of the business of the Brisbane Tramway Company. The irregular mode in which the passage of these measures had been carried through and the unfair nature of their substance would have been afforded just grounds for Imperial intervention. It was not indeed seriously suggested that the Acts should be disallowed, but I suggested that the Imperial Government might properly ask the Queensland Government to submit the question of the equity of the Acts to impartial arbitration—for instance, by the Privy Council under special reference. The plan was, however, rejected by Mr. Theodore, the Premier, and the Secretary of State finally refused to intervene. The City of London, however, was able to protect the interests of the pastoral tenants—largely London financed or controlled—and the Tramway Company: for Mr. Theodore found that that money market was closed to Queensland until he came to a just settlement with the two bodies.

Therefore, My Lord, the only protection in such cases is that of goodwill, and the development of the play of the forces, based as

much on its own sheer self-interest as on justice and fair play, to guard against any inequitable or unjust legislation. The attempt to make provision against possibilities has never availed where facts may outgrow legal or constitutional formulæ, or where national opinion is determined to assert itself. You will not escape a capital levy in England merely by a proviso in a Statute or by dicta on the sacred rights of property. The natural and obvious system of free trade and open competition is before our eyes being broken into by anti-dumping duties and the threat of fifty per cent. tariff in Great Britain. After all, you have to trust the future Indian Legislature and Government, and try and get an honourable understanding on your immediate difficulties and apprehensions, and base the future on the goodwill thus created. Do not encumber the constitutional Statute with clauses which can only provoke resistance now and in the future, but frame them in a manner that will encourage the sense of freedom and equality in the Indian and Britisher alike.

*Mr. Benthall:* That is why, Mr. Iyengar, we were trying to come to an agreement.

*Mr. Iyengar:* But we want constitutional government.

*Mr. Sastri:* Just a few words, My Lord Chancellor, on this subject of discrimination. I take a somewhat narrow point of view from which to look at this question. I do not know the commercial and trading implications and consequences.

In the framework of the British Empire the Dominions have certain powers which India desires to enjoy just as well. I would beg my colleagues round the table, especially those who sit to the right of you, to remember that the main motive of the whole of this agitation is to get India on the status of a Dominion. Some of us realise, although not all, that in respect of the defence of India and external relations and paramountcy we cannot yet be a Dominion. It is with great difficulty that we reconcile ourselves to that situation. Before, therefore, any other disability or discrimination between us and a Dominion is proposed and is accepted on this side it will be examined with the greatest possible care, and, unless its necessity is proved beyond challenge, it is not fair to expect us, speaking not only for ourselves but for our children and our children's children, to accept a limitation or a difference which may mean the sacrifice of posterity's interests.

Now commercial discrimination is in the category of a very valued matter. It flows and has flowed in the case of India from political subordination. It is well known—rather I should say it is notorious—that we, the people of India, when we travel abroad within the Empire, even when we have been born and have been settled for generations in a dominion, are discriminated against. The nature of the British Empire is such that freedom is given to a Dominion even to practise discrimination upon its own nationals. I may go and settle in South Africa, I may beget children there and my children may beget children, still they may be submitted

and are submitted to discriminations of a most humiliating type. It happens in Australia; it happens in every Dominion.

Great Britain itself, Mr. Benthall argued the other day, does not discriminate against Indians. It is perfectly true. We enjoy here the status of full British citizens. We recognise it gratefully. But when Mr. Benthall proceeded to say, at the end of one of his striking sentences: Therefore India has no moral right and cannot ask for the legal power to impose discriminations upon us, it seems to me he went a little too far.

*Mr. Benthall:* I think I said "should not," not "cannot."

*Mr. Sastri:* Well, I do not know the minute differences between British auxiliaries.

*Mr. Benthall:* I am sorry.

*Mr. Sastri:* Now it seems to me that upon the power of Parliament here there is no limitation; if to-morrow it occurred to the Parliament of Great Britain to put disabilities upon our people, there is nothing to prevent that being done. The power, the full freedom, to act is there, but there is forbearance as well.

*Chairman:* I hope good sense as well as good will. -

*Mr. Sastri:* When this matter was discussed with great anxiety last year this fact was recognised—that India, too, should have the same freedom, but that she should be asked by mutual arrangement to exercise the same forbearance towards the people of Great Britain and Ireland as that people exercise towards the people of India. I think that was the position last year. When we stipulated that there should be a convention based upon reciprocity we meant that the legal power to act if necessary should be there, but that the forbearance should result from a convention based upon reciprocity. That preserved our self-respect, and we, therefore, accepted it with satisfaction. That was where the matter stood last year. I do not know what has happened since, but our friends seem now to take the matter a good deal farther. When Mr. Benthall says India has no moral right and should not ask for the legal power, I should like to know why she should not ask. Give her the legal power as you contemplated last year, and then get her, upon a reciprocity convention, to forbear even as you have honourably forborne. You will find that she will respond handsomely. Why is she now, merely because she asks for Dominion Status, told beforehand, "Yes, you may have Dominion Status provided you cripple yourself to this extent. We want to impose a disability upon you by law." That seems to me, My Lord Chancellor, to take the matter into a sphere where the self-respect and the national dignity of the Indian people are hurt, and hurt, it seems to me, unnecessarily.

I beg Lord Reading, who has personal experience of this matter, which he will recollect in the days when he was Viceroy and had to deal with troubles in Kenya and South Africa and all over the Empire, to see whether it is really necessary to take this matter

beyond the stage to which it was taken last year, whether he will lend his support to the demand now made upon the people of India that before they can be advanced constitutionally they should be bound hand and foot in a way in which Great Britain is not bound, in a way in which no Dominion is bound. I submit that this is to ask for something which is a mere irritation, and no addition to the forces of good will and mutual confidence. I beg my British friends carefully to consider whether it is necessary to ask that constitutional guarantees of this kind, which can only be worked by the Viceroy, acting singly, which means by the Viceroy acting, as we know only too well by a recent example, under the direction of the India Office here, should be imposed—to consider why such a disability should be imposed upon India before she is admitted even to the possibility of being a Dominion.

Now, if our restrictions are to be in the best interests of India, as on the authority of the late Labour Government the Viceroy recently announced to India, I should like to know how this is in the best interests of India. Have we had political power before within the British Commonwealth and mis-exercised it? Is it based upon experience, this demand that a legal disability should be put upon the future Government of India? If experience is to be a guide, there is none to justify the demand that is made.

On the other hand there is plenty of experience which will justify the taking away of powers which certain parts of the Commonwealth now enjoy. It is not open to us to make such a demand; it is not even open to us to contemplate it. How dare we ask for such a thing! But we may ask this, that we should not be suspected beforehand, and that before being admitted to the sisterhood of the Dominions we should not be asked to produce sureties for good behaviour which no other Dominion was asked to produce or would be asked to produce. Trust us in this matter of commercial discrimination; go back to the reciprocity basis, and make a convention. We must understand each other fully, and I think you can leave it there. We cannot accept a disability which will be a bar sinister not only on us but on our children and on our children's children.

Therefore, Lord Chancellor, it seems to me that I cannot conscientiously support this demand, partly because I see no justification for it, and partly because I do not even see the necessity for it. Whatever you wish to get you can get by means less hurtful to our sense of self-respect.

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*Pandit M. M. Malaviya:* My Lord, after what Mr. Sastri has so well said on the general aspect of the question, I shall have even less to say than I thought I would have to on the matter which is now before the Committee. It is clear from the discussion that all parties are agreed about one matter, namely, that there shall be no discrimination against British subjects carrying on trade or commerce in India. From the beginning to the end everybody is

agreed on that matter; the only question is as to the method by which this shall be secured.

The formula which was adopted last year goes far beyond the requirements of the case when we look at it from that point of view. It speaks of the rights of British subjects as being exactly the same as the rights of Indian-born subjects. This goes far beyond the region of the protection which commercial interests can legitimately and fairly demand. The necessity of revising that formula has been made very clear by the statement of Mahatma Gandhi. Protection of the rights of persons trading in India is one thing; the development by all legitimate means of the indigenous industries of the country is quite another matter. Foreigners and British subjects trading in India are entitled to ask for the protection of their commercial rights; they are not entitled to ask for that measure of assistance and protection which Indian indigenous industries in India are entitled to ask for.

But the formula as I have said goes beyond this and places both of them on the same footing of equality. To show how it will work in practice we have just to consider the question of bounties, subsidies and other kinds of help which the Government may give to indigenous industries. The British Europeans carrying on trade or business in India cannot ask that bounties or subsidies should be given them on the same footing that Indian firms residing and carrying on business in India would be entitled to ask. Therefore, what is wanted is that there should be a formula which will secure the measure of protection that British merchants are entitled to and not go beyond it. It is a very difficult thing to formulate such a formula. Last year's formula has been examined and has been found wanting. Mahatma Gandhi has put forward another formula, *viz.*, that "No disqualification not suffered by Indian-born subjects of the State shall be imposed upon any person lawfully residing in or entering India merely on the ground of race, colour or religion." I beg all the members—

*Chairman*: There is another part.

*Pandit M. M. Malaviya*: I will come to that later. I beg all the members of the Committee, particularly my British friends, to examine it as carefully as they can. The essence of the formula, the principle, is generally agreed—that there shall be no discrimination between the rights of the British mercantile community, the firms and companies living in India, and the rights of Indian-born subjects. That was the formula of last year—no discrimination against the rights of the British mercantile community trading in India. The Mahatma Gandhi has put forward what seems to me a wider and sounder basis—"No disqualification not suffered by Indian-born citizens of the State shall be imposed upon any person lawfully residing in or entering India merely on the ground of race, colour or religion." I fail to understand what more comprehensive clause could be suggested.

*Chairman*: I am not criticising the clause at all—I have had it copied out for me, and I have got it in front of me, and I have



been studying it very carefully—but some time I will ask you to be good enough to try and translate it into a positive instead of a negative. You see you have a double negative and a double negative makes it a little difficult. I will not trouble you now, but later I should like you to put it into a positive form. You say “No disqualification not suffered.” I should like to know what is the positive.

*Pandit M. M. Malaviya:* To save time I will at once put forward a positive form of that formula which I think will meet Your Lordship's wishes. I propose that it should be expressed like this—“No discriminative legislation shall be passed nor any administrative action taken against any person lawfully residing in or entering India merely on the ground of race, colour or religion.” You will see I have done away with one of the negatives. It says “No discriminative legislation shall be passed,” for it is by legislation that discrimination may be practised. I submit that this puts the matter in a more positive form, and I commend it most earnestly to the consideration of my British friends. But I recognise, My Lord, that it may not be easy to accept any formula without very careful examination in a matter of the importance of the one with which we are dealing. Therefore, if this is not acceptable, Mahatma Gandhi offered, he definitely said: “Let there be another formula found for it.” His attitude has not been the attitude: “I stand by this and I know no other formula.” Every other friend has shown a willingness to consider and adopt such a formula as will secure to our British fellow subjects an assurance that there shall be no commercial discrimination exercised against them, and will yet leave the Government of India of the future as free as any free Government is.

If the formula is acceptable now and is accepted, well and good. If it is not accepted, the formulæ which have been put before this Committee and the discussions which have taken place are sufficient, ample and eloquent evidence of the fact that there is a common desire, a desire common to all members of the Committee, that a suitable formula should be found, and that the European mercantile community should have no cause for apprehension that any wrong or injustice would be done to them. I submit that of all the matters that have been so far discussed there has been a greater approach to unanimity on this question than perhaps on any other. And I submit that the spirit which has pervaded our discussions not only in this Committee but also in the private conversations which we have had with Sir Hubert Carr and Mr. Benthall has been very helpful in this matter. We have not felt that we were discussing things from two opposite and opposing points of view, but that we were trying to find out a solution which would meet with acceptance on both sides. I therefore submit, My Lord, that this formula should be considered and if it is not found satisfactory another should be sought after.

I wish to add a few words to what Mr. Sastri has said on the other aspect of the question which arises from it. The formula

which has been suggested in Mr. Benthall's speech seeks to bind the future Government of India hand and foot to a large extent in a matter in which the future Government should be as free as any free Government is. I am surprised that at this critical juncture, this unfortunate juncture in English history, with the facts which are occurring before your eyes every day, with the facts which are before the world every day, the commercial situation and the measures which Parliament has had to adopt to meet the varying situations, that anybody should seriously think of tying down the future Government of India in the manner which has been suggested.

I wish you to have two aspects of the case before your mind. One is the sentimental aspect which in all matters political counts for a world. That sentimental aspect is that the Government of India of the future should feel that it is as honourably free as the Government of England or as the Government of any Dominion. If you impose a restriction or seek to bind over the Government of India of the future by conventions in matters of such vital importance to the nation, you are hurting the sensibility, the national self-respect of India, without any gain to yourselves. Secondly, remember please, that you have to deal with the interests of three hundred and fifty millions of people, one-fifth of the human race. You will not be in India, your statesmen will not be there to help the Government of India of the future to decide what particular measures of tariffs or customs or other measures it should adopt in order to serve the best interests of the people from time to time.

Leave freedom, therefore, to the multitude of counsel that will be found assembled in the future Government of India, to deal with the situations that may arise and to discharge its responsibility to the people even as you discharge your responsibility to your people.

I wish, My Lord, to say in this connection a word also about the definition of citizenship which was regarded as affording one means of solving this problem. With all my respect for Lord Reading—and that is considerable—I regret that he did not see that the definition that he suggested went really too far for the purposes of the case. The definition of citizenship in the India of the future, according to him, should include British merchants trading with India without setting foot on Indian soil. This is a definition which, in my humble judgment, will not find support anywhere, in any parallel. The implications of it will be serious. If you are prepared to consider the possibility of Indians and British subjects being put on a footing of permanent equality or becoming equal partners in all the wealth that we possess, if you are willing to consider to-day that you will extend the benefits of unemployment to the millions upon millions of Indians that remain unemployed from one end of the year to the other, if you are willing to consider that the Parliament of England should pass all the measures that may be necessary to develop the national industries of India, let us sit down and discuss the matter. If not, be content

to recognise differences that exist. God, in his bounteous wisdom and love for man, has made it a rule that every people should live and prosper in the land in which they have been placed; that while they may meet together in friendly commerce and loving service, none shall desire to obtain a domination over the other. Therefore there are certain duties which the Government of every people has to discharge towards that people. It does not follow that the same duties can be discharged towards other people with advantage to the people concerned in every case. It may be something different. I submit that the definition of citizenship in the Nehru Report was not meant to include what it was sought in this discussion to include in it. It must be limited to a British subject carrying on trade in India or residing in India. It was not meant to include a British subject who never set his foot on Indian soil. I think, therefore, that that will not afford a satisfactory solution. Therefore I commend again the formula which I have placed before the Committee, and I submit that if this is not found to meet the requirements of the case we should explore another formula.

The other part of Mr. Gandhi's proposal covers—

*Chairman*: Existing interests.

*Pandit M. M. Malaviya*: Existing interests. It runs as follows:—

“No existing interest legitimately acquired and not being in conflict with the best interests of the nation in general shall be interfered with except in accordance with the law applicable to such interests.”

The formula which has been suggested by Mr. Benthall is:—

“The right of private property is recognised and guaranteed, and no person shall be deprived of such property except under due process of law, provided that property of all kinds may be expropriated for public purposes subject to the payment of just compensation, to be assessed by an independent tribunal.”

Here again I submit that Mr. Gandhi's formula is wider and better. It says:—

“No existing interest legitimately acquired, and not being in conflict with the best interests of the nation in general, shall be interfered with except in accordance with the law applicable to such interest.”

There are several points in this formula to which I beg to invite the attention of the Committee. “No existing interest”: that means that cases of existing interests are being considered, and that it is not contemplated to cover all cases of interests which may arise in the future. Then “legitimately acquired.” I regret to find that objection has been taken to the word “legitimately,” and I cannot understand it. The second qualification is also important —“and not being in conflict with the best interests of the nation

in general." It says such interest shall not be interfered with. How? Not by an executive order, but "except in accordance with the law applicable to such interest."

In reply to a question put by Sir Tej Bahadur Sapru, Mr. Gandhi made it clear that his formula did not cover private property generally throughout the country; it was mainly directed towards property which had been Crown property and which had passed into the hands of some private person or persons. Now, is it so very wrong to desire that, where the interests of the nation demand it, cases where property has passed from the Crown into the hands of some private individual should be examined?

*Sir Tej Bahadur Sapru:* Even where there is a grant in perpetuity?

*Pandit M. M. Malaviya:* Even where there is a grant in perpetuity.

*Sir Tej Bahadur Sapru:* Then we differ.

*Pandit M. M. Malaviya:* I hope to win your agreement. What does it mean when we say that it should be examined? Let us suppose it is a grant in perpetuity. Is it not open to every Government which may have reasons to think that a certain grant in perpetuity is invalid, that it was made on a wrong basis, to have the matter examined in a court of law? I am sure Sir Tej Bahadur Supru will agree that it is.

*Sir Tej Bahadur Sapru:* My answer is most certainly not, under Indian law or any law; if property is granted to my ancestors and myself, and I have held it for the last fifty years, then the Crown cannot come in, and I would point out that that reservation was expressly made in the Irish Constitution, Article 11.

*Pandit M. M. Malaviya:* I will deal with that in a minute. This is only to illustrate what was meant; this is not vital to the discussion which we are holding.

*Sir Tej Bahadur Sapru:* Will you permit me. My Lord, to put a question to Pandit Malaviya on that? I am very much interested in this question, and I want Pandit Malaviya to explain it.

*Chairman:* Certainly.

*Sir Tej Bahadur Sapru:* Everybody who knows anything about Oudh knows that after the Mutiny every inch of the ground was confiscated by Lord Canning, and then it was re-granted either to the old occupants of this land or to new occupants, and every single Taluqdar in Oudh, except possibly five Taluqdars, holds his land throughout the Province under grants made by Lord Canning, and under an Act passed by the Indian Legislature in the year 1869. Does Pandit Madan Mohan Malaviya contemplate that the Taluqdars in Oudh or the Zemindars elsewhere should be called on to furnish a statement with regard to their title, and that it would be open to the Government to examine the validity of their title?

*Pandit M. M. Malaviya*: No, the property shall not be—

*Sir Tej Bahadur Sapru*: May I ask, My Lord, how this is relevant to the question of commercial discrimination on racial grounds? This is a very large and important question, but it stands very different from the question we are now considering, which is commercial discrimination. This relates to all titles whether in the hands of British commercial men or Indians. How is it germane to the question at issue?

*Chairman*: There have been so many things said in the last six weeks that are not germane to the question at issue that I do not feel inclined to stop it, but I am sure that Pandit Malaviya has just heard the clock strike. Some day I will debate with you the iniquities of the Statute of Limitations. I am not sure that you and I who have not got property do not take a different view of the Statute.

*Pandit M. M. Malaviya*: The discussion was not raised by me. It was raised by Mr. Benthall in his speech, the Mahatma had to discuss it, and I am compelled to refer to it. I would like to draw your attention to the Irish Free State Act. Article 11 of that Act says:—

“All the lands and waters, mines and minerals, within the territory of the Irish Free State hitherto vested in the State, or any department thereof, or held for the public use or benefit, and also all the natural resources of the same territory (including the air and all forms of potential energy) shall, from and after the coming into operation of this constitution, belong to the Irish Free State (Saorstát Éireann)—subject to any trusts, grants, leases, re-concessions then existing in respect thereof, or any valid private interest therein, and shall be controlled and administered by the Oireachtas, in accordance with such regulations and provisions as shall be from time to time approved by legislation.”

I would like to emphasise those words, “any valid private interests.” They show that there might be some invalid grant which the Government might think fit to examine. That is what I think Mahatma Gandhi's proposal was meant to cover. Let me give another instance. I take it from the constitution of the Serbs, Croats and Slovenes. Article 41 of that constitution says that “large forested areas which have been granted to named persons shall become in accordance with the law the property of the State without payment of compensation.” There is a similar provision in another constitution. Now I know of cases where forests have been taken possession of or granted by the Government of India and poor people have been subjected to much hardship. Should it not be open to the future Government of India in such cases to have the matter examined by a Court of Law? I submit there is sufficient justification in the laws which exist in other places for placing a reserve power in the hands of the Government of the

future to have any particular cases investigated. It does not mean that private property generally shall be interfered with. I have read the speech of Mahatma Gandhi carefully twice since our last meeting and I find there is no justification for the suggestion that if his proposal is adopted the title to every property will be unsafe.

Still, I suggest another formula. It has been already mentioned that the Nehru Report contained a formula guaranteeing protection to private property. I had the honour to move it at Lucknow and I still stand by it. That formula is not affected by what Mahatma Gandhi has said. I take my formula from the Polish Republic. The Polish Constitution says:—

“ The Polish Republic (for which I would substitute the Federal Government of India) guarantees the right to property, whether the individual property of citizens or the corporate property of associations of citizens, autonomous bodies or of the State itself, as one of the fundamental principles of society, and of law and order. The Republic (say the Federal Government of India) guarantees to all its inhabitants and communities the protection of their property, and allows limitation or abolition of individual or collective property only in cases provided for by law for reasons of general utility and with compensation.”

My Lord, I cannot think of a formula more comprehensive than this, and I do not see any reason why we should not all agree to adopt such a formula and to embody it in the constitution.

There are other constitutions which provide for the same thing. The right of the Government to acquire property for public purposes in accordance with law and after paying compensation is very well established. That is under the Land Acquisition Act. But wherever Government might feel that public property has wrongly passed into the hands of private persons, and that it was needed in the public interests, the Government have the power to take action to recover that property for the general benefit. But everywhere except in one place, in every other constitution of which I have any knowledge, private property is protected, but is everywhere subject to the qualification that it may be expropriated in the public interest without the consent of the owner according to law and upon payment of compensation. Look at the constitution of Denmark. It says:—

“ Property is inviolable. No person may be deprived of his property save when the public good requires it. Expropriation can only take place in consequence of legislation and on payment of full indemnity.”

It was never meant that by an executive order the future Government of India should seize a man's property and turn him out. The Norwegian Constitution and other constitutions have similar provisions.

*Chairman*: Well, we will take your word for that, Pandit Malaviya.

*Pandit M. M. Malaviya*: Thank you, My Lord. So I submit that private property has no cause for apprehension under the arrangement proposed by Mahatma Gandhi. This formula is one which should satisfy everybody, but if it does not—

*Sir Tej Bahadur Sapru*: May I be permitted to ask one question? Do you contemplate that private property may be taken away in India only for those purposes for which it is now taken under the Land Acquisition Act, or for any other purposes or for any other reasons?

*Pandit M. M. Malaviya*: I contemplate that it should be taken for purposes for which it can be taken at present under the Land Acquisition Act, but I do not shut myself up there. The Government of India of the future should have the same freedom to discuss what the public interests may demand when the occasion arises. I cannot offer a solution at present; I cannot foresee it. But, My Lord, I submit that this formula that:—

“ No existing interests legitimately acquired and not being in conflict with the best interests of the nation in general, shall be interfered with except in accordance with the law applicable to such interests ”

gives the greatest assurance that anybody can need that in any case that may be taken up the process of law will be resorted to but not a confiscation of any property without it. That I think should suffice for the protection of private property. I strongly support the formula put forward by Mahatma Gandhi and I hope it will be found acceptable after further examination. If it is not, some changes may be introduced and discussed. Here again let me say that we are nearer an agreement in principle and also in almost the language of the formula than perhaps on many other matters.

*Sir Tej Bahadur Sapru*: May we have that formula in a positive form, Lord Chancellor? There are two negatives in that formula also.

*Pandit M. M. Malaviya*: No.

*Chairman*: I think the Pandit is going to try to make it positive so that we may know exactly.

*Pandit M. M. Malaviya*:

“ No discriminative legislation shall be passed nor any administrative action taken against any person lawfully residing in or entering India, merely on the ground of race, colour or religion.”

There is only one negative in it.

*Sir Tej Bahadur Sapru*: There is “ except.”

*Pandit M. M. Malaviya*: No, nothing—“ merely on the grounds of race, colour or religion.” The other point relates to property.

Now, My Lord, I will say only a few words about Imperial preference. On that question the opinion that has already been expressed is worthy of consideration. On that, the Report of the Fiscal Commission is also a guide. We are quite willing that we should consider the question of Imperial preference, and enter into the most-favoured-nation arrangement with Great Britain. If Great Britain will allow us to do it, if Great Britain will recognise our right to sit on a footing of equality with her and the self-governing Dominions of Britain, then we become qualified to discuss the question of Imperial preference. Why should not we show Imperial preference to our fellow-subjects of Great Britain if they will treat us as fellow-subjects? But so long as you refuse to treat us as equal fellow-subjects, so long as you want to have some powers withheld from us which are enjoyed by other self-governing Dominions, are you justified in asking us to agree to Imperial preference? You are bargaining in a manner which, I submit, does not become your position and which certainly does not help us in our position. Make up your minds, irrespective of the consideration whether we shall agree to Imperial preference or not, to recognise the right and the justice of our being treated as equal fellow-subjects, as equal fellow-men, enjoying the same freedom in our country as you enjoy in your country, and you will find, I venture to say, that we shall not be ungrateful, we shall certainly not be unjust. There is enough in which England and India are interested in which your small island, but a great country, and our extensive country, an ancient land, combined, can contribute much to the happiness each of the other. The three hundred and fifty millions of people in India are a body with which any nation might wish to deal on terms of friendship and goodwill. Establish the goodwill, establish friendship and trust us of our own will, not on your motion, not as a condition precedent to be entered in a covenant, or to be part of the constitution, which has an element of force and compulsion or coercion in it, expect us as free men, ruling in our country as you rule in your country, to enter into an agreement which shall be beneficial to both of us.

### *Financial Safeguards.*

*Chairman:* That concludes the discussion on commercial discrimination, and we will now begin the discussion of Finance. I want to say only a word or two with regard to that before I call upon Sir Purshotamdas Thakurdas to open the discussion. Whatever our opinions are upon Finance, there is one thing upon which we are all agreed, and that is that the present time is a time of very great difficulty in the financial world, and it is a difficulty which is not only felt in England but which is felt, as you all know, throughout the world.

Personally, I cannot help feeling that it is a time when the less said about things the better. Another point about it is this, that it is a time for experts with a knowledge of national and inter-



national affairs and national and international finance. It is, therefore, not a subject which will bear very much public discussion; rather must we rely upon the opinions of those who are really able, from their knowledge of international finance to guide us in this matter.

Now, everybody knows that at the present time we in England have had to impose upon ourselves very stringent safeguards, and we have had to deny ourselves very many things. I will not say that that has led to discontent, because everybody wants to shoulder the burden; but I do wish to impress on you that this is not a time to relax financial safeguards and not a time to relax our caution in dealing with them; and I feel personally that that is especially the case both in India and in England.

I have before me the pact which was come to between the Governor-General of India and Mr. Gandhi, where it is stated in paragraph 2 that of the scheme which we came to last year Federation is an essential part, and that also are Indian responsibility and reservations or safeguards in the interests of India. I would beg everybody to remember those words "in the interests of India." A careless word or a hastily expressed opinion may have repercussions and reverberations outside this Chamber and cause very great damage not only in India but also in England, and, as I think in many other places as well.

Therefore, although I do not for a moment desire in any way to shorten discussion, I would beg you in the interests of India, and having regard to the very difficult time which the financial world is passing through, to speak with very great caution and with very great brevity and not to let any hasty or unconsidered word cause difficulties or disaster which you would never mean it to cause, but which, if it got about, might possibly result and lead to very great harm.

I therefore hope that our discussion of this subject will not be long, and that it will be very careful; and in due course of time I shall endeavour to put before you in a Report the views of the various members of the Committee.

I now call on Sir Purshotamdas Thakurdas.

*Sir Purshotamdas Thakurdas:* Lord Chancellor, when you addressed us at the beginning of the discussion of the three items of Army and External Affairs, Commercial Discrimination, and Finance, you expressed a desire on the same lines as what you have just said, that it would be wise to express our views in general terms and not in detail. I fully perceived then the necessity for not dealing with any special grievance of India regarding either exchange or currency or the financial control as at present exercised on us in India from Whitehall, but I cannot help feeling at the same time, My Lord, that, as far as the international world is concerned, India has, if I may say so, very little influence. We have met here to influence you and those on your right, and to put before them the aspirations of India—if I may call them so, the

minimum aspirations of India—as to what form of government and what particular safeguards in the interests of India alone would be acceptable to us. If anything more than that is imposed, we would not look on it as an advance.

Your Lordship has referred to the present condition of world finance. I wonder if you did not mean the present condition of affairs generally in the world, financial, economic and otherwise.

In spite of this we feel we ought to submit to the Conference here and especially to the British Cabinet and through them to the British Public our views as to how we would like the finances of India to be managed. We say the finances of India should be managed by a Minister responsible to the Indian Legislative Assembly and responsible in the most complete manner. Safeguards we are prepared to accept whenever they are proved to be in the interests of India but any safeguard regarding finance other than this cannot be conceived by us to be justified. Your Lordship has referred to world conditions. It strikes me, My Lord, that there is a peculiar significance in the way in which the most undesirable occurrences have, as it were, been concentrated into the period of our sittings here during the last few weeks or rather months. They have conspired to make your difficult task more difficult and certainly less beneficial to us. One of them is the Parliamentary Election here and the consequent diversion of the attention of yourself and your colleagues on this Committee to matters other than those directly concerned with this Conference. It would almost appear as if our task, which was difficult in any case, was to be made more difficult by some of those world factors. But every evil has its redeeming feature and so I think I may say that if you can come to a clear understanding in such an unfavourable atmosphere, there is hardly any danger of our conclusions being either extravagant or being taken in a mood of over-enthusiasm. There strikes me, at the moment, a little oppression in opening the discussion on this question. I am oppressed by a feeling of some unreality due to what has been appearing in the Press and what one hears outside—that is that we are merely to put forward our views and that there is not to be any exchange of views between you and us regarding this question. If that is the best which can be done by the Cabinet and by you here, all I can say is that we have no option in the matter.

Finance, My Lord, is one of those subjects which, in the future Government of India, should be completely transferred to and put in charge of a Minister without any safeguards at all except of course those which are ordinarily involved in the constitution and those which may be proved to be in the interests of India. The control of finance has been admitted to be fundamental, for finance has a bearing on all the activities of government. It is agreed that it is highly technical but it is a vital part of administration. The Government of India in their Despatch emphasise the necessity of safeguards not merely on the ground of the credit of India and of the Government of India; not only on the ground of maintaining

the capacity of the Government of India to borrow, and the solvency of the Government, but also they say it should include the vast private capital invested in India by Britishers. I venture to say that this is not a proper ground to be put forward. There is a difference between capital borrowed by the Government from outside India and capital invested by the non-national trading community to which Mr. Benthall referred in the discussion on commercial discrimination. Is there any wonder that we in India feel very apprehensive of any external capital, if at this juncture and in consideration of how the future finance of India should be managed, we are told that in the vast magnitude of the interests to be safeguarded by the Secretary of State there is also to be considered not only the credit of the Government of India *per se*, but there is also to be considered the question of the British capital invested in India.

These considerations, however, one sees with some relief are not in the opinion of the Government of India to create a permanent and insurmountable obstacle, but it is opined that there must be "careful preparation," to use the words of the Government of India. It is said that Parliament must demand some signal guarantee for the future. Exactly what the "signal guarantee" is to be is not indicated more precisely in the Despatch. We are told that a sudden and fundamental change would create uncertainty and doubt as to the future policy, and it may mean financial and economic disaster to India. I venture to ask: where is the suddenness about this demand by us? Have we not been asking for liberty to control finance in India for ten years at least, if not longer? What is the use of the change if it is not to be fundamental but is to be only in petty details? Government admit that a change is always unsettling. May I add that it is unsettling at any stage and at any time. Do I understand, therefore, that those who support the Government of India point of view mean that we are never to have a change because a change is unsettling? Will amounts borrowed by the Government of India in the United Kingdom go down in the interval between now and the period when they feel that the preparation which they indicate is complete? In short, will all these grounds, if accepted, not always be there and thus deny India the right of managing her own affairs in the domain of finance?

My Lord, I do not wish to refer to any of the actions of the Government of India either of commission or omission, regarding India's grievances in connection with the management of her finances during the last ten, twenty, and thirty years. I have here with me a very useful brochure, which was published by the Federation of Indian Chambers of Commerce and Industry last April, under the heading: "Indian Currency and Exchange, 1914-30; How Government have managed it." I venture to recommend it to anyone who has the time to read it and wishes to get more information and details; every fact mentioned in this brochure is taken from Government records and from authorised publica-

tions. But, whilst I do not wish to criticise here the various actions of the Government in the past, I cannot help saying that all these together create a picture which, as far as we in India are concerned, tries our patience and convinces us that any future reforms will be useless if finance is not completely transferred to us to be managed by us and by a Minister responsible to the representatives of the people in India.

I sincerely do not wish to say anything regarding the comparatively sparing and, if I may say so, miserably inadequate manner in which the Finance Member of the Government of India from time to time has been able to control the increase of expenditure in the Military Department of the Government of India. I do not think it is an exaggeration to say, that if we had a Minister responsible to the Legislature, he would have been out of his office several times before the current expenditure of the Government of India for the Military could be at anything like 50 crores. Before the war, Sir, our expenditure was 29 to 30 crores, and there were continued complaints against that expenditure as being too high and absolutely crushing to India. In our index number we have gone back to nearly 100 in India and the military expenditure has been kept even now at about 50 crores; it was 54 crores last year and we are told that it will be somewhere about 47 crores this year. I call this, in one word, a scandalous amount of burden on the poor taxpayer of India, and all I can say is, that a Finance Member who owed responsibility to the Legislature would certainly have seen that this expenditure was very substantially reduced long before now.

I wish, therefore, now to deal with one or two peculiar features in Indian finance. One of these features is that the item of defence—which is proposed to be kept reserved and not completely transferred—of pay and pensions, and of interest on India's indebtedness, these three items between themselves absorb eighty per cent. of the Central Government's net revenue. In paragraph 173 of their Despatch, the Government of India use these words. I am reading now from page 148, paragraph 173 (b):—

“(b) in this case the total of the charges, including only cost of the Army, interest on loans and pensions, amounts to about eighty per cent. of the net revenue of the Central Government. When a ‘first charge’ absorbs all but a narrow margin of the total revenue, the security implied by the nomenclature disappears. In such a case, the authority responsible for seeing that these payments are made, has an intimate concern in the whole financial administration of the country.”

Of the three items, two are such as cannot be reduced substantially—namely, pay and pension, and interest—but the third is one which needs very substantial reduction. It is this same consideration which make us say that nothing but a Minister completely responsible to the Legislature will satisfy us, and that no safeguards

devised by this Conference in the shape of control from outside India will be acceptable to us.

There is one more feature of the finances of India which I think requires to be mentioned. A good deal has been said regarding India's credit. The borrowings of India to-day—I give the figures available as up to the period 31st March, 1931—amount to approximately 1,171 crores. They are roughly half and half—half in rupees and half in sterling. The rupee borrowing is 654·95 crores, and the sterling borrowing—*i.e.*, the total foreign borrowing of India works out at 517 crores with exchange at 1s. 6d. to the rupee. For all practical purposes we may say that the total indebtedness of India is half in India and half in Great Britain. I do not overlook the fact that a certain part of the sterling borrowing may be held by Indians or that a certain part of the rupee borrowing may be held by Britishers; but as figures are not available to the public we may take it that half the interest in the credit of India, the borrowings particularly, is in London, and the other half is in India. With this special feature I wish to ask whether it is conceivable, in fairness and in ordinary common sense, if I may say so, that we in India would be so rash as to ask for any system of reform which would endanger the safety of those in India who hold the Government paper—this 654 crores of rupees.

Is it not that the interest of the British investor is identical with the interest of those of us in India who hold Government paper and Government indebtedness? I wonder whether the Britisher here who asks for special safeguards regarding his holding of Indian Government paper is genuinely apprehensive about the solvency of India so far as the existing debt is concerned, or whether there is anything else which makes him so apprehensive.

With regard to the solvency of India, we have been repeatedly told that India is one of the few countries in the world which has a comparatively light amount of debt. We are told further that most of the debt of India is productive debt, and that the unproductive figure in the total debt of India is comparatively very small. If I am not mistaken, responsible representatives of the Government of India have said that it is almost a bagatelle.

Why, then, is there this extra caution and this apprehension that the management of finance in India cannot be left with the Legislature in India, and especially cannot be left to be looked after by those whose interests are the same as the interests of those who hold Government of India paper here?

We are told that Government have responsibility regarding exchange and currency. "The underlying idea in all countries" it is said, "is that the currency authorities should be free to conduct a policy in accordance with the dictates of sound finance, detached from all political influence." I fully agree with that, with this caveat that the political influence which has to be detached should be not only political influence in India but should also be political influence from here. What other influence do the India Office here

and the Secretary of State exercise but political influence? Why, then, ask for finance to be a reserved subject and say that as far as the Reserve Bank is concerned it should be free from political influence in India?

I submit, My Lord, that, whilst I and those whom I have the honour to represent here are all for a sound bank being started whenever it is feasible to start it, and may agree to political influence being kept outside it, it is all the more imperative, in our opinion, that it should be ensured that the political influence from here, which is stronger, surer, and, I venture to submit, not always in India's interest, should not be there either directly or indirectly in any form or shape. We can not possibly risk political influence from here being in the slightest degree exercised either on the Government of India in the Finance Department or in connection with the Reserve Bank.

We therefore feel, Sir, that no Reserve Bank would be acceptable to India unless it is started by a Statute in the Indian Legislative Assembly. That is my firm conviction. We will be a party to nothing else. We would rather go without a Reserve Bank than have one started by any Legislature other than our own in India. You can there have the necessary restrictions about political influence being kept out, but it should also be free from any other political influence from any other quarter.

This question of the Reserve Bank, My Lord, brings me to the question of exchange and currency. That is the domain where Your Lordship's hint and very wise advice I propose to accept in the very fullest degree.

There are two problems in connection with exchange and currency questions in India. One is the immediate problem, which I may not touch upon in detail because that is the one question which, dealt with here ever so cautiously, may have that influence which Your Lordship wishes to see avoided.

But I submit that that does not shut me out from dealing with the question of the management of exchange and currency in the future. Before I leave this question of the immediate problem of exchange, may I say a few words in general? Your Lordship has referred to what has been forced on the Government here—the breaking away from the gold standard. Whether we in India could have afforded to keep on the gold standard at the point where it was kept until September last is a question on which I have strong views. It is a question to which I do not think I need more than merely refer in passing here, but there is no doubt about it that India was tied to the chariot wheels of England and as soon as England made up her mind to go off the gold standard the order went out that India should go off the gold standard too. I personally think it saved the reputation of the Government of India and of the Finance Department because I do not think that they had enough gold reserves to carry on on the gold standard in the extravagant manner in which they were carrying on, dissipating their

reserves in a manner which would not have been done if we had had a responsible Minister. Still, your action here last September did save their face, and saved a complete breakdown in India. We were told a week earlier that we could not go off the gold standard because the credit of India was in jeopardy, but as soon as England made up her mind to sacrifice her credit India's so-called credit did not matter. In the Legislative Assembly there was a demand for an adjournment of the House, and the division on that adjournment motion was one of the biggest divisions I remember. Practically every elected member—and I think a few nominated members, though I am not sure about them—voted for the adjournment motion, and this motion which is generally regarded in our country as a motion of censure was carried in the Legislative Assembly.—

Thanks to Sir Samuel Hoare we have had two informal conferences at the India Office since 5th October last, and we hoped that the matter would be discussed further. We hoped that in view of the strong opinion expressed by the Legislature we should hear something more about it. I can assure Sir Samuel Hoare and those in control at the India Office that none of us wished to have a single inkling earlier than would be given in the ordinary course to the public, but we felt that we were entitled to press on the India Office our apprehensions regarding economic conditions in India being worsened. If England, which had gone back only to the pre-war ratio to gold, found it necessary, with all her riches and her resources and her credit, to go off the gold standard, how could it be expected that India, an agricultural country, an admittedly poor country with less credit and less resources, could continue, without great distress, to maintain her ratio to gold at  $12\frac{1}{2}$  per cent. above the pre-war ratio. But since 25th September we have gone up in sterling from  $1s. 5\frac{3}{4}d.$  to  $1s. 6\frac{3}{8}d.$  to the rupee. I can only say that there is a great feeling in India that the grossest injustice has been done to India again. I will leave my remarks at that as far as the immediate problem is concerned.

Regarding the permanent problem of the question of Indian currency it is suggested that there should be control until a Reserve Bank comes into being. That period is indefinite, and is getting more and more indefinite as world conditions get worse and worse. It is suggested that during that period there should be control from the India Office, until a Reserve Bank is established and the day to day management is handed over to it. Until that period it is said that there should be control from here. Various suggestions have been made as to what can be done for this period of transition. We in India feel that as far as exchange and currency is concerned the India Office certainly has not a record of which they can be proud or with which we can be satisfied. The two Commissions which inquired into the question of the currency of India during the last eleven years certainly have not proved to be Commissions which have been able to see more clearly than the ordinary man in the street. Why not let the people of India, who are directly

and primarily affected by these matters, risk their own good fortune, and make an effort to run their own show?

I therefore feel, Sir, as far as the management of exchange and currency is concerned, while the Reserve Bank appears to some of us to be a long time in coming (and may circumstances be such that a Reserve Bank can be assured next year), until then, in the interregnum we feel that we cannot rely on the wisdom from Whitehall being exercised on the Indian problem in a manner which would be less risky than what we can do in India with out little knowledge. If we make mistakes in India there will not be any suspicion that those mistakes were made in any interests than those of India. And in this connection there is a very unfortunate sentiment expressed in the Government of India's despatch.

*Chairman:* What page is that?

*Sir Purshotamdas Thakurdas:* Page 151, paragraph 176, the last sub-paragraph:—

“ We should hope that it would be possible to convince Indian opinion of the desirability that such a bank should work in close co-operation with, and on lines approved by, the Bank of England.”

Why should the Reserve Bank in India be tied down to work on lines approved of by the Bank of England? We recognise that the Bank of England is the premier bank, that it has influence and that it has experience to which I personally take off my hat every time.

*Chairman:* Then would you agree with the last sentence in that paragraph?

*Sir Purshotamdas Thakurdas:*

“ Whatever the future for India may be, she must always be greatly dependent upon her standing in the London money market, and nothing could be of greater service in this direction than a close co-operation between a Central Bank for India and the Bank of England.”

I am coming to that.

*Chairman:* You agree with that, I suppose?

*Sir Purshotamdas Thakurdas:* I will come to that in a moment.

*Chairman:* I said: You agree with that view?

*Sir Purshotamdas Thakurdas:* I am going to deal with it in a minute, if Your Lordship allows me. I was going to say, Sir, there is no reason why the Reserve Bank in India should be committed to work on lines approved by any bank; and whilst I myself have a very great opinion of and great respect for the experience of the Bank of England, I personally feel that India should be left free to take advice, guidance and counsel from such institutions as she likes.

Personally I have not the least doubt that if the people in power here have self-confidence we would every time come to England and



go to the Bank of England, but we do not want to be tied down to it. That is my reply to what Your Lordship asked. I personally feel that every time you lay down that we shall go to Whitehall we feel that we may do better elsewhere. But if you feel that Whitehall has such knowledge, such experience, is such a repository of wisdom regarding Indian affairs, why not leave us free? We must resort to it for advice in our own interest. And, similarly any Minister of the Government of India who is responsible to the Legislature will go to the one place where he can get the best advice. I myself have not the least doubt that the Bank of England will be the one place where he will go, and that the Bank of England would be the one institution from which we would want guidance, but we would not agree to it being laid down anywhere that our bank should work on lines approved of by either the Bank of England or, for the matter of that, by any bank. I feel, that whilst we want all the good will that we can get from the London money market, the London money market is not going to lend us money simply because we have a Secretary of State here who has control over Indian affairs. The London money market will lend money only if the economic condition of India is sound, only if our budgetary position is balanced, only if things in India are settled down and are going on normally; and whilst I would solicit all the good will from the London money market and from the Bank of England, I would not agree to any handicap or any safeguard being put on to the Indian constitution for the mere purpose of getting their good will. I expect their good will to be there, and to be available to us as a business proposition whenever we can put before them a proposition which is sound on its own merits, and not owing to any artificial trammels like Whitehall controlling our destinies.

Now, My Lord, in paragraph 176 the Government of India Despatch refers to special difficulties regarding the present financial and economic position in India. I fully agree with that. Since that Despatch was written, those difficulties have, if anything, increased.

*Chairman*: Quite right.

*Sir Purshotamdas Thakurdas*: And have not diminished; and all that I can say is that the diminution of them and any relief under those conditions, require a bold step to be taken from here in the direction of meeting the wishes of India.

*Chairman*: Would you agree with the last sentence of paragraph 176? You were just quoting paragraph 176, and you said you agreed with it. Do you agree with the last sentence?

*Sir Purshotamdas Thakurdas*: Which, Sir?

“It would indeed hardly be possible to imagine a combination of circumstances more unfavourable to an immediate change of policy, which might result in shaking public confidence in the credit of India.”

I do not agree with that at all. I agree with the description of the conditions in the interior of India as indicated in paragraph 176.

*Chairman:* I put it in fairness to you, because you said you agreed with paragraph 176, and then I said I assumed that that meant you agreed with the last sentence as well; but you make an exception there. I follow.

*Sir Purshotamdas Thakurdas:* The last sentence is not a description of the circumstances existing in India; it is their own inference.

*Chairman:* You do not agree with the last sentence.

*Sir Purshotamdas Thakurdas:* I do not agree with the last sentence. I contend that the delay in the reforms may have contributed to a certain extent; but that is not pertinent to my subject.

The Government of India indicate a certain period of preparation—that is in paragraph 179—and they say that they will have to work out a financial programme for the future which will inspire confidence. One wonders what is this financial programme which His Excellency the Governor-General's Executive Council have in mind. I wonder if we could have any information on that score from Sir Samuel Hoare.

We feel that the programme which requires to be worked out now is the programme of trusting the people of India. Give them the right, as was said by somebody here, to make mistakes in working out their own destiny, with the usual safeguards.

The Government of India accept the position that eventual transfer is implicit in the Government's declared policy of advance, and they also accept that the control of finance is vital to any form of self-government. How can they expect India to be satisfied without that complete control?

The Report of the Federal Structure sub-Committee at the last Round Table Conference, paragraphs 18 and 19, indicates the safeguards which were then suggested. They referred to financial stability and to the credit of India outside and at home, and I infer that from these two considerations it was suggested that it was necessary to reserve powers to the Governor-General with regard to budgetary arrangements and borrowing. But would not the powers of the Governor-General in the usual course, which are indicated in paragraph 21 of that Report, be sufficient? Continued deficit budgets not covered, and reckless borrowing, would hurt the Indian investor first and most directly. The price of the Government paper would go down, and it would hurt the Indian investor as much as it would hurt the investor here in London. Why not, therefore, trust the Indian public, which has a vested interest in the matter of Government borrowings, to safeguard the position?

Personally, My Lord, I feel with regard to both these questions that it is the Indian investor who will be anxious that the Finance Member of the future shall not run away with the bit in his

mouth and risk doing something which may jeopardise the holdings of Indian investors.

We therefore feel, My Lord, that as long as we are trusted there is no necessity for those who have lent to the Government of India to ask for any special safeguards, and I submit that when we are told that the time is not yet, and that there has to be a period of preparation, we cannot help feeling that this will be construed by many as merely a blind and an excuse. I trust that that cannot be the intention of the Cabinet here, but things are not going to improve because of delay. Whenever power is transferred, it will have to be transferred in full confidence to the Indian Legislature. What new factor is expected to develop which will make the task easier a year hence, or two years hence, or, if some people prefer it, five years hence?

The credit of India, I submit, cannot be allowed to be spoon-fed by the Secretary of State any longer. People in India and in England and elsewhere will lend money to the Government only if the economic condition of the country warrants it. People will not lend if they find the Government has a succession of deficit budgets. The Secretary of State has lately paid rates of interest on behalf of India here which have certainly been the highest paid by any respectable major Government in London at that period. How, therefore, can it be said that the mere fact that the Secretary of State will have some sort of control will by itself be of advantage to India?

And here I want to make it clear that it is generally agreed, at least in private conversations, that no retained control of the Secretary of State as at present is necessary or desirable. I ask: If the Secretary of State has some sort of control on the future Finance Department of the Government, how is it going to make a difference? I feel, Sir, that what is required is principally: Are you prepared to identify the interests of those who hold the Government of India's paper here with the interests of those who hold it in India? And, as I said, the figures show that the borrowings are half here and half there—in fact more than half in India. As far as the London holder is concerned, he has the Governor-General there with the powers which are indicated in paragraph 21.

Regarding the question of successive Budgets being deficit Budgets and being allowed to be kept at that, I venture to ask, Sir, whether that has not happened till now whilst the control of the Secretary of State from here was on? What were the Budgets in the years 1920, 1921 and 1922 like in India? And was not a substantial increase in the amount of India's indebtedness due to these deficits? Had not that to be finally consolidated into a sort of permanent debt? How can you lay down anything here which would be satisfactory under a certain set of circumstances which we cannot envisage to-day but which may indeed come in the near future or the distant future? How can you to-day lay

down anything to provide that you cannot have more than one deficit Budget or more than two deficit Budgets? Personally I would not like a single deficit Budget to be carried forward; but certain circumstances in India, *e.g.*, famines or continued depression of trade and so on, may make it imperative and may make any other course almost a danger. I therefore feel that there also, inasmuch as Government paper in India in future will depend for its attractiveness or otherwise on the manner on which our Budgets there are balanced, to that extent the best safeguard that you can have is the credit which that Government will command both abroad and at home. The Upper House in the Central Legislature would have direct voice in the Budget and any legislation and the public at large would be continuously watchful if they realised that they were free to manage their affairs in the manner best suited to India.

I want to say one word before I conclude regarding the Statutory Railway Board question. The railways of India are one of the best assets of the taxpayer in India; they constitute one of the largest assets of the taxpayer in India. That is a source from which not only do the Central Government receive substantial revenue every year, assuming the machine to be decently well managed, but it is most useful to bring the distant parts of India together and make India one. It is also a very useful weapon in the development of industries and with regard to relief being made available to the growers of India's crops. The Government of India deal with all this fully in their Despatch. We want a Statutory Railway Board to be started, but again that must be done by a Statute of the Indian Legislature and by nobody else.

I wish to say that we are as keen that the Statutory Railway Board should be started in India—with the consent of and by a Statute of the Indian Legislature—as I said we were regarding the Reserve Bank. If any efforts are intended to put on to us in India any machinery in this connection devised by any other Legislature than the Indian Legislature, all I can say is that it will meet with the strongest opposition and will lead to most unnecessary suspicion. I do hope that this will be left to the Legislature in India.

In conclusion, My Lord, India must have control of finance in India, and no control of finance from England, either day-to-day control or otherwise. The only control would be the normal powers exercisable by the Governor-General. I feel that I cannot do better, in this connection, than read out one sentence from the appeal which my Right Honourable friend, Mr. Srinivasa Sastri, made in the Federal Structure sub-Committee last year. He has one telling sentence. It is a fairly long quotation. I do not wish to read it all, but there is one sentence in it with which I can most fittingly conclude my remarks. My Right Honourable friend said:—

“I am therefore positive that we should have finance transferred to the Government of India without any restric-

tions or safeguards, without any suspicions as to our capacity to manage our finances honestly or efficiently, and it is only if we are placed in untrammelled control that we can find ourselves truly in the new constitution."

I have finished, My Lord.

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*(The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.)*

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*Sir Tej Bahadur Sapru:* My Lord Chancellor. As last year, so also on this occasion, I do not propose to go into the technical side of the question of finance.

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I think the technical side has been discussed very thoroughly this morning by Sir Purshotamdas Thakurdas, who is entitled to speak with authority on questions of this character, and last year by my colleague, Sir Bhupendra Nath Mitra. I therefore propose to confine myself to an examination of the constitutional position, the legal position of finance under the present system of government and the constitutional position which, in my humble judgment, finance should occupy under any constitution that may come into existence. I have just said—any constitution that may come into existence. My Lord Chancellor, speaking on this occasion, I feel that there is a sense of unreality about the whole discussion. It is impossible for me not to give expression to the feeling that all this discussion which we have been carrying on will have most material bearing and most useful effect if the result of our deliberations during the last two months, or, if I may say so, of our deliberations during the last twelve months, is going to lead to responsibility at the Centre; but if all that is in store for us is that blessed word Provincial autonomy, which gives comfort to a certain class of politicians in England, then let me tell you I am here to explain my views, because I consider it a part of my duty, and not because I think I am going to get anything out of this discussion.

I do not wish the British Delegation to remain under any misapprehension as to our attitude so far as the political future of the country is concerned. I am here because courtesy demands that I should place my views before you, not because I feel that the situation as it has developed during the last two or three days lends any scope for any hope so far as we on this side are concerned. I, therefore, give that warning in the friendliest spirit, but in the firmest and plainest language.

I will now pass to my subject. Lord Chancellor, the paragraphs which deal with finance in the Federal Structure Committee's Report are paragraphs 18, 19, and 20. Your Lordship will remember that the question of finance in relation to safeguards was discussed at great length by Lord Reading last year, and the whole

discussion last year proceeded on the footing, not that finance was to be a reserved subject (an expression which has been incautiously and inadvertently used at this Session), but that it was really going to be a transferred subject, though it would be subject to certain safeguards. Certain powers would be reserved to the Governor-General which might be used by him on certain occasions, in certain circumstances and conditions. Therefore, when I am proceeding to deal with this question of finance to-day, I am proceeding on the assumption—and on no other assumption—that finance is going to be a transferred subject.

Frankly, I do think that finance is the life-blood of any responsible government; and although you may give us everything else, yet if you do not give us finance, I for one do not look on the sum total of our gain as amounting to responsible government. That is the view which I take of this matter.

Now, let us examine what exactly is the present position under the Government of India Act. If Your Lordship will be pleased to turn to a few sections through which I propose to take you, the present position will be abundantly plain. The material sections dealing with finance in the Government of India Act are sections 20, 21, 22, 26, 67 (2a), 67A, and 67B.

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Now, My Lord, according to Section 20:—

“ The revenues of India shall be received for and in the name of His Majesty, and shall, subject to the provisions of this Act, be applied for the purposes of the Government of India alone.”

I would particularly invite the attention of the Committee to these words:—

“ For the purposes of the Government of India alone.”

They are very useful and wholesome words, and in any future constitution I should like these words to be repeated. Now these words to my mind give ample safeguard against the suggestion which has been made in some quarters, or which may possibly be made, that a new and inexperienced Legislature may play with public money and may abuse it, or may use it to other than legitimate purposes. I do submit that these words impose a statutory limitation upon the power of the user of public money: that the money must be used for the purposes of the Government of India alone.

Let me further add that so far as these words are concerned they have formed the subject of discussion and rulings by various law Members and also by various Judges of the High Courts in India, including such eminent Judges as the late Sir Ashutosh Mukerjee and the late Chief Justice of Madras. If I may be allowed a personal reference, I will appeal to Lord Reading. When I had the honour of being associated with him in the Government both he and I had to consider the application of these

words in connection with a very big corporation which applied for a loan to the Government of India at that time; and I can say, without divulging any secret, that my ruling was explicit and clear and was endorsed by the entire Government of India and also by the India Office at that time. I had the satisfaction shortly after that this same view was taken by the Madras High Court. Therefore I maintain that it will not be a possible objection that if finance is transferred to popular control the irresponsible and inexperienced members of the Legislature will make other than legitimate use of public money. There will be always this section to be used against them if they want to lay their unholy hands upon public money.

Now, My Lord, Clause (2) is equally important:—

“ There shall be charged on the revenues of India alone—

(a) All the debts of the East India Company; and

(b) All sums of money, costs, charges and expenses which, if the Government of India Act, 1858, had not been passed, would have been payable by the East India Company out of the revenues of India in respect of any treaties, covenants, contracts, grants or liabilities existing at the commencement of that Act; and

(c) All expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India.”

Here again I will particularly invite Your Lordship's attention to the words “lawfully contracted,” and the words “on account of the Government of India”. They are words of limitation and, therefore, they to my mind provide an ample safeguard.

“(d) All payments under this Act (except so far as is otherwise provided under this Act).”

Therefore, unless you are prepared to accept the suggestion of Mahatma Gandhi that debts should be investigated and that certain debts should be wiped out—which I think I am not entitled to assume is your disposition—I submit this Statute itself provides the amplest possible safeguard for a certain kind of securities. All the debts of the East India Company are guaranteed by it; they are a charge on the property. Similarly:—

“ All sums of money, costs, charges and expenses which, if the Government of India Act, 1858, had not been passed, would have been payable by the East India Company ”

are a charge on the revenue. Similarly:—

“ All expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India ”

are a charge and will continue to be a charge.

Now, My Lord, I pass on to section 21, and I would particularly invite Your Lordship's attention to section 21, because that is the

section which places all power in the hands of the Secretary of State. It says:—

“ Subject to the provisions of this Act, and rules made thereunder, the expenditure of the revenues of India, both in British India and elsewhere, shall be subject to the control of the Secretary of State in Council.”

It is the expenditure of the revenues of India which is under the control of the Secretary of State; but Your Lordship will be pleased to observe that so far as this chapter of the Government of India Act is concerned, or rather this part of the Government of India Act is concerned, or any other part, the Secretary of State's personal or official security for any debts is not provided for. I am only pointing that out because in the course of our discussions with financial authorities here it has been pointed out to us repeatedly that the English investor feels confidence in Indian loans because at the back of his mind is the feeling that the Secretary of State is in some way or other a surety for that loan. Now, so far as the legal and constitutional position is concerned it is not so; the loans have got to be paid out of the revenues of India. The Secretary of State, no doubt, is a member of the British Cabinet, and there is the general moral credit of the British Government there. An investor may rely on that moral credit, but so far as the legal and constitutional position is concerned I say that the investor has got to look only to the revenues of the Government of India and nothing more.

I then pass on to section 26, which says:—

“ The Secretary of State in Council shall, within the first twenty-eight days during which Parliament is sitting next after the first day of May in every year, lay before both Houses of Parliament—

(a) an account, for the financial year preceding that last completed, of the annual produce of the revenues of India, distinguishing the same under the respective heads thereof, in each of the several provinces; and of all the annual receipts and disbursements at home and abroad for the purposes of the Government of India, distinguishing the same under the respective heads thereof;

(b) the latest estimate of the same for the financial year last completed;

(c) accounts of all stocks, loans, debts and liabilities chargeable on the revenues of India at home and abroad at the commencement and close of the financial year preceding that last completed, the loans, debts and liabilities raised or incurred within that year, the amounts paid off or discharged during that year, the rates of interests borne by those loans, debts and liabilities respectively, and the annual amount of that interest.”



I omit the rest. So that you will find that under this section the control of Parliament in the last resort is complete, final and absolute; and when we are told that finance shall be or may be, for a certain period of time, under the control of the Secretary of State, let us remember the implication of such a suggestion. The meaning and implication of that suggestion is that the ultimate control shall vest in Parliament; and so long as the ultimate control vests in Parliament—it may be for five years, it may be for ten years—in truth finance will not be a transferred subject, and if finance is not a transferred subject then the responsible government that you will establish will be a maimed or a paralysed sort of government.

Then I pass on to the next section. That is section 67 (2) (a) and that again is very important, showing what the constitution provides in the nature of safeguards already, and what I venture to suggest would be more or less the line of progress in future. Section 67 (2) (a) says:—

“ It shall not be lawful, without the previous sanction of the Governor-General, to introduce at any meeting of (either Chamber of the Indian Legislature) any measure affecting—

(a) the public debt or public revenues of India or imposing any charge on the revenues of India.”

That was the section which was relied upon last year by those who suggested that during the period of transition there must be such power vested in the Governor-General in regard to matters of currency and exchange and things of that kind. Whether you can have the previous sanction of the Governor-General consistently with the responsible character of the Government is a question on which I venture to differ from those who put forward that view. I then pass on to 67A. Under sub-section 3 you will find that the subjects mentioned therein as outside the power of the Legislature are interest and sinking fund charges on loans, expenditure on which the amount is prescribed by or under any law, salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council, salaries of Chief Commissioners and Judicial Commissioners, and expenditure classified by the order of the Governor-General in Council as Ecclesiastical, Political and Defence. Those are the protected subjects in the present constitution. If the arrangement which we suggested last year and which I repeated only a few days ago in this Committee with regard to the Army comes finally to be accepted, the expenditure with regard to Defence, and possibly also—certainly also—with regard to political subjects will also continue to be protected under that arrangement for the period of transition.

Then, My Lord, comes the final section with which I want to deal, and that is 67B. Section 67B is known popularly as the section of certification, and I would invite your attention to the

very unrestricted and general language used in this section. The section says:—

“Where either Chamber of the Indian Legislature refused leave to introduce or fails to pass in a form recommended by the Governor-General any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity, or interests of British India or any part thereof.”

and thereupon you have a procedure laid down which I will not read at the present moment. This section is, I think, the very negation of responsibility, and it would be fully out of place in anything which set out to give us any measure of responsibility. I made my position abundantly clear last year and I wish to repeat that I would much rather have the present statutory powers remaining in the Viceroy rather than have anything like this which would bring him into repeated conflict with the Legislature, which would create a sense of irritation and which would lead to serious deadlocks between the Executive Government on one side and the Legislature on the other, with the Governor-General on one side and the Executive Government on the other. Therefore, so far as I am concerned, I must be taken to be an unqualified opponent of any kind of power of certification.

*Chairman:* Do these remarks refer only to what you would regard to be reserved subjects, namely, the Army and External Relations, or are you only saying that Finance ought not to be a reserved subject and that therefore certification does not apply to that?

*Sir Tej Bahadur Sapru:* I would have no power of certification vested in the Governor-General, even in regard to the Army and political subjects. I would create specific charges on the revenues of India for the Army and the political side, or any other subjects, after an examination of the present position and after arriving at a basic figure.

*Chairman:* Would you accept some such form as this?

“If the Governor General certifies that its enactment or, as the case may be, its enactment in a form other than that in which it was passed, is essential to the discharge of his responsibility, the Governor-General should have power thereupon to enact the Bill as a Governor-General's Act in the form in which it was recommended, with any modifications he would think expedient.”

You will see that the words there are “essential to the discharge of his responsibilities.” and for the moment I am only referring to the Army and External Relations.

*Sir Tej Bahadur Sapru:* Frankly, My Lord, I would not agree to that.

*Chairman:* I am sure you will tell me why.

*Sir Tej Bahadur Sapru:* A power like that, to my mind, is only a power of certification in disguise, and what I would say is this, that while I am prepared that you should create certain specific charges on the revenues in regard to agreed subjects which may be within the jurisdiction of the Viceroy, you should also trust the Legislature, and trust that the Legislature would be able to find the money. Why should you proceed on the assumption that the Indian Legislature will have a double dose of original sin, and that it will never be able to discharge the responsibilities which are entrusted to it?

I say that all these sums will be a first charge of second charge—whatever you like to call it—on the revenues of India. The only answer to that argument of mine can be—and it is the one answer that has been given—to ask where is the guarantee that the Indian Legislature will raise the money. Frankly, if that point is made, where is the guarantee that the Indian Legislature will not commit suicide? What I say is that you ought to depend on the common-sense, the patriotism and the sense of responsibility of the Indian Legislature. If you are going to proceed in this spirit of distrust of the Indian Legislature, in this spirit of want of confidence that it will discharge its elementary functions, then I think your constitution, however carefully guarded it may be, is foredoomed to failure.

Now, My Lord, having dealt with these sections. I will just recall to the Committee the three safeguards that were mentioned by Lord Reading last year, the safeguards relating to external borrowing, internal borrowing, and currency and exchange. So far as those safeguards were concerned, they formed the subject of a great deal of discussion on both sides, but no agreement was arrived at with regard to them. It is open to the British Delegation or to any section of the British Delegation to raise a discussion with regard to any of those safeguards or to all of them, and to invite our consent to them; but the proposition must come from the other side.

So far as I am concerned, the position which I took last year is exactly the position which I take now. With regard to the limitation suggested by Lord Reading in regard to external borrowing, I ventured to point out that the position which Lord Reading intended to assign to India under the new constitution was not going to be lower than that assigned to the various Dominions. That interpretation of mine was not challenged last year, and indeed it was endorsed. In this connection, I will remind you of what is stated in the Report upon the question of finance. "Upon the question of finance," says the Report at page 14, "Indian opinion was that even the safeguards set out in the Report went too far, especially those giving special powers to the Governor-General."

Coming back to the question of internal borrowing, as I understood it what Lord Reading suggested really amounted to this. If, after a series of deficit years, the future Minister of Finance refused to balance the budget by raising the proper taxes, and

attempted to balance the budget by raising a loan at a heavy rate of interest which might prejudice the existing security, then the Governor-General would intervene. I ventured to ask Lord Reading last year, and I do so again with great respect, that he might be pleased to tell us what exactly is his idea of intervention; at what stage and how he intends that the Governor-General in such a case shall intervene. Until I know that, it is impossible for me to make up my mind. But I venture to think that the best safeguard will arise from the commonsense of the Legislature. If it is found that a Finance Minister has been playing "ducks and drakes" with public money, well, the Finance Minister or his Government will have no credit with the Legislature and much less with the country at large, and there will not be any money forthcoming. Then I come to currency and exchange.

*Chairman:* Just before you leave that—because you are now coming to the next point, would you mind looking at paragraph 18 of our last Report?

*Sir Tej Bahadur Sapru:* Yes, My Lord, I will. Paragraph 18 to which Your Lordship invites my attention is this —

*Chairman:* Wait a bit. Do not let us be in a hurry. I need not trouble you about the first sentence. What is your opinion about the second sentence?

*Sir Tej Bahadur Sapru:* The second sentence runs thus:—

"It would, therefore, be necessary to reserve to the Governor General in regard to budgetary arrangements and borrowing such essential powers as would enable him to intervene if methods were being pursued which would, in his opinion, seriously prejudice the credit of India in the money markets of the world."

My answer to the question put by Your Lordship is this: I want to know first what is meant by intervention. How is the Governor-General going to intervene? At what stage is he going to intervene? What will be the machinery at his disposal for enforcing his decision? Until I know the position in regard to these questions it is impossible for me to understand what the implication of this sentence is. Now if what is intended to be meant by this sentence is that the Governor-General should have some sort of a power of certification which he might use at some stage or other, then I would very strongly dissent from it. But until I know what exactly is the significance or the meaning to be attached to this sentence I am not in a position to say whether I am prepared to endorse or whether I am prepared to repudiate the implications of this sentence.

My Lord, in that very paragraph 18 you have another sentence, and I will invite Your Lordship's attention to that with the same object again. That paragraph runs:—

"With the same object again, provision should be made requiring the Governor-General's previous sanction to the

introduction of a Bill to amend the Paper Currency or Coinage Acts on the lines of Section 67 of the Government of India Act. They are further agreed that the service of loans, with adequate provision for redemption, by sinking funds or otherwise, and the salaries and pensions of persons appointed on guarantees given by the Secretary of State should be secured, along with the supply required for the Reserved Departments, as Consolidated Fund Charges."

Out of these two sentences, the second sentence is one which I readily endorse. With regard to the first, I think Sir Purshotamdas has dealt with the position to-day somewhat at length, but what I would venture to point out is that as a result of the discussion which took place last year it was urged that, at any rate until such time as we established the Reserve Bank, there must be the previous sanction of the Governor-General required in the case of a Bill to amend the Paper Currency or Coinage Acts on the lines of Section 67 of the Government of India Act. Now in regard to this very matter I would venture to make a few suggestions, My Lord.

I have had the opportunity of discussing the suggestions I am going to make with my friend Mr. Benthall and one or two other European representatives. I will leave it to them to express their opinions independently. I will only venture to say that I found as a result of the discussion that there was a far greater measure of agreement between their point of view and our point of view than I thought would be the case.

I suggest that we might still make provision in the Statute for the establishment of a Financial Council for the period of transition, that the business of this Financial Council should be to advise the Finance Minister in regard to currency and exchange. As regards borrowing you might have a Public Loans Board—

*Chairman:* I am sure you will help me, because you and I are getting to very close grips now. The Financial Council to be advisory.

*Sir Tej Bahadur Sapru:* To be advisory.

*Chairman:* I quite follow. By whom appointed?

*Sir Tej Bahadur Sapru:* I am going to deal with all those questions in a minute.

*Chairman:* Very well, thank you.

*Sir Tej Bahadur Sapru:* I should lay down the qualifications by the Statute of the members for this Financial Council, and I should see to it, and if necessary expressly provide for it, that the appointments shall be made independently of any political considerations relating either to India or to England, and that they shall be made solely in the interests of sound finance. I should not lay down any rule providing that a certain number of members of this Council shall be Englishmen or members belonging to any nationality; I should take any persons possessing the necessary qualifications or merits anywhere I could find them.

As regards the appointing authority, I should vest the power in the Governor-General, who should exercise that power upon the advice of or in consultation with his Ministers. Possibly at the start of the constitution you will have to make some special arrangements for bringing into existence this Council. The Governor-General might take into his confidence certain men representing public opinion, so as to start this new Council, but afterwards, whenever there was a vacancy, the Governor-General should be the authority to appoint a member of this Council in consultation with or upon the advice of his Cabinet.

*Chairman:* What is the tenure of office?

*Sir Tej Bahadur Sapru:* So far as the tenure of office is concerned, you can have three years or five years. Further than that I should give this statutory Finance Council the power to call for any information or any facts or figures relating to currency and exchange, with which it shall deal, from the Finance Department.

With regard to things that may happen—if the Finance Council gives advice to the Finance Minister and the Finance Minister accepts that advice, there is an end of the trouble. If the Finance Minister, however, refused to accept their advice, I should make it obligatory on him to lay before the Legislature the opinion of this expert Financial Council, and I should give further power to this expert Financial Council to have its views properly represented, through one of its agents, in the Legislature, and that would not by any means be inconsistent with the character of responsible government. You can find instances in various constitutions where experts are allowed to present their view of the matter without having the power to vote. When the Legislature has dealt with the question, or has refused to accept the opinion of the Finance Council, then the Governor-General comes in, and he comes in in the ordinary constitutional manner in which he comes in in any other case in any other Dominion. I should give the Governor-General the power of veto. I should give the Governor-General the power to reserve a Bill for the pleasure of the Crown. I should even have the power of disallowance vested in the Crown in England.

I am reminded by my friend here, and I ought to have added, that I should also give the Governor-General power to return a Bill with his observations to the Legislature.

Some of these powers already exist in the present constitution. Most of these powers are to be found in the various Dominion constitutions. The sum total of all these powers vested in the Governor-General should, in my humble judgment, afford the amplest possible guarantee for safe and sound administration of our currency and exchange during the period of transition.

What will happen after the period of transition is over or after the Reserve Bank has come into existence is a question which requires consideration. It may be that experience might confirm us in the belief that it is necessary to perpetuate this Finance Council. It may be that experience might show that this Finance Council

would after the bringing into existence of the Reserve Bank be found to be an unnecessary institution, and we would then make some special provision for certain powers to deal with these matters in day-to-day administration.

*Chairman:* I want to follow one thing. You say when the Finance Council gives advice which the Minister accepts the matter is at an end.

*Sir Tej Bahadur Sapru:* The matter is at an end.

*Chairman:* But suppose the Council gives advice which the Minister rejects?

*Sir Tej Bahadur Sapru:* First the Legislature comes in. Then it goes on to the Governor-General. He may return the Bill with his observations, he may veto the Bill, or he may reserve it.

*Chairman:* And may certify the advice. What is to happen suppose he vetoes the Bill and nothing happens, so to speak.

*Sir Tej Bahadur Sapru:* If he vetoes the Bill, then the Bill drops.

*Chairman:* But what is to happen with regard to Finance then?

*Sir Tej Bahadur Sapru:* The old state of things continues.

*Chairman:* Very well, thank you.

*Sir Tej Bahadur Sapru:* Finally, I submit there is the fact that the Legislature may be dissolved. That is a very strong power and one which should enable the Governor-General to ascertain public opinion in the most effective manner. That power, however, is to be used very rarely and only in extreme cases. I am not one of those who say that we are not to have safeguards in our own interests, but to have safeguards in our own interests is one thing, and to have safeguards, the enforcement of which is left not in the hands of an internal authority, but in Whitehall, is quite another thing. Those safeguards will never be accepted by Indian opinion for the simple reason that Indian opinion is not satisfied that Indian interests have always been safeguarded or protected in Whitehall. On the contrary, there is a very strong feeling which has been accentuated during the last two years and particularly during the last few weeks that when it comes to a conflict between English and Indian interests Indian interests go to the wall. Therefore, My Lord, I say that there is not one of us who is not alive and keenly alive to the importance of sound finance, to the importance of creating confidence in the investor in England and in India, to the importance of husbanding India's resources and raising proper taxation so as to discharge our obligations, but if it is assumed that the Indian Legislature of the future is going to be dead to a sense of responsibility, then to such doubters and sceptics I can only say, "Try us, and we shall prove it."

*Chairman:* What about the raising of future loans?

*Sir Tej Bahadur Sapru*: I should have a Public Loans Board to advise in regard to that matter, and if in future we borrow through the Treasury we shall be subject to all the requirements of the Treasury to which all other Dominions submit.

*Mr. Pethick-Lawrence*: Lord Chancellor, it has been a great pleasure to me to listen to the profoundly interesting speeches of Sir Purshotamdas and Sir Tej Bahadur Sapru on this important question of finance. I should like to preface what I shall have to say on this subject with the expression of a hope which is shared by my colleagues representing the British Labour Party, that our deliberations here will bear fruit in a measure of responsibility at the Centre, and not, as Sir Tej said he feared, merely in a form of Provincial self-government.

Returning to our immediate subject, finance is at the heart of all representative institutions. In our country it is the control of the purse which has given to our House of Commons its predominant position in our affairs. For that reason I sympathise with those who have spoken when they say that unless control of finance is secured India will have been presented with the shadow and not with the substance of self-government, and that that which has been given with one hand has been taken away with the other.

At the same time, I am sure that our Indian colleagues who have honoured us by coming all this way to consult with us do appreciate what I understand is the position of the British Government. Up to the present, the financial structure of the Government of India has been built up on the faith of British Ministers, who are therefore in a position of trustees who cannot relinquish their trust except under certain conditions. They have not merely a responsibility to those who have found the money until now, but also a responsibility for the stability and permanence of the whole structure of Indian finance. As you, Lord Chancellor, said in another connection a week ago, they feel that they are not entitled to take any risks.

Apparently, there is an unbridgeable chasm between these two conflicting loyalties, the loyalty of India to her idea of self-government and the loyalty of the British administration to its conception of trust; and, where loyalties are concerned, Lord Chancellor, we all realise that we have to tread with great delicacy and care. But, in my view, the conflict is more apparent than real, because the ultimate object of both though seeming so different, is in reality the same. It must be in the interests of every Indian that the credit of the Government of India shall stand high and impregnable. Not merely would the honour of their country be tarnished if anything in the nature of default were to occur, but a lack of confidence would involve a loss of credit which would add enormously to the cost of fresh borrowing, and in consequence be a serious check on all material progress at the very opening of the new chapter in India's history. On the other hand, it must be in the interests of this country that confidence in the financial



stability of India shall with the progress of time come to depend not on any external restraint but on the internal strength and integrity of Indian opinion.

This must be so, because when the new constitution is set up and the machinery which we have been elaborating here is set in motion, no safeguards however powerful on paper could be effective against deliberate default or even against a gradual drift towards breakdown. What we have to devise, therefore, is not a system by which India may be permanently subject to outside interference which would, of course, be most humiliating to her, but a method by which, during a transitional period in which India is gaining its own financial prestige, British credit shall help to underpin its structure. It is as though after a re-formation of a business firm the old Directors remain on the Board to strengthen the newly formed directorate.

Lord Chancellor, I will not take up the time of this Committee by attempting to pursue this general theme in great detail through all the questions with which we are naturally concerned; but there are two matters as to which I propose to add a few observations. If there are to be extraordinary powers of financial control, there is clearly only one person who can be trusted to exercise them, and that person is the Governor-General. It is equally clear that the Governor-General must act upon advice, and the question arises as to whose advice he shall take. To answer this question, it is important to realise that while the first purpose to be achieved by the financial safeguards is to promote sound finance, the second purpose, which is equally important, is to retain and promote confidence. The person whose confidence is to be maintained is not the Government of India, is not the Home Government, is not even the City of London, but as Sir Purshotamdas has said, the investing public, both at home and in India, or rather both in India, and in the large world outside. Whomever the Governor-General appoints to advise him and however they are appointed, it seems to me to be essential, therefore, that they shall be in close touch with himself, with opinion in India, and with those in the City of London, qualified to speak on behalf of the investing public. I listened with the very greatest interest to the sketch put forward by Sir Tej Sapru, and his proposals certainly appealed to me *primâ facie* as a basis for building a practical scheme. They of course want to be examined in detail and one would wish to hear what may be said with regard to any imperfections which it may be considered are involved. But whether that scheme or another one be the one finally chosen, for my part I feel it should be quite possible to find a method of providing advisers to the Governor-General which shall at once satisfy the honour of India and meet the requirements of sound finance and confidence of the investing public.

The other question to which I propose to refer—bearing in mind, Lord Chancellor, your very wise advice at the beginning—is the question of the exchange which has been already referred to in—

cidentally by Sir Tej and at some greater length by Sir Purshotamdas. When first I had the honour of joining this Committee in July, I feared that the divergent views on this question of the exchange were impossible of reconciliation, because no formula can ever be found which will make 18 equal to 16. I am aware that to-day there are still considerable differences of opinion on this question, but I venture to think that the events of 21st September last have made a profound difference in the situation. When this country went off the gold standard, the Indian exporters of wheat, cotton and jute got in practice what they wanted. For the same reason the Indian manufacturer got his protection against his Japanese competitor. The issue to-day, therefore, is mainly one of honour and prestige; and highly important as these are, they are not so stubborn as the principles of arithmetic. Most of the self-governing Dominions have elected to pin their faith, for the present at any rate, to sterling, and several important European countries have practically taken the same view. In the present circumstances, therefore, it seems to me that an honourable settlement on this matter also ought to be within reach.

My Lord, I have the feeling that, during these weeks that we have sat here in this Committee, we have been getting steadily nearer and nearer together on all these practical issues that have been raised. Therefore, in concluding, what I have to say, I would press most earnestly those who have the responsibility, to devote themselves patiently, whole-heartedly, and sympathetically to continuing to explore the whole situation.

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*(Lord Sankey here vacated the Chair, which was taken by Lord Reading.)*

*Chairman:* I have some observations to make to you, which I hope to keep short. Some of the remarks of Mr. Pethick Lawrence, which I think were undoubtedly designed to be, and in fact were very helpful, make it unnecessary for me to travel into all the subjects to which he referred. I would desire at the outset to direct your attention to what seems to me to be the most important matter we have to consider now. It was mentioned by the Lord Chancellor this morning and was taken note of by speakers who followed. The position at the moment in the financial world is so confused and so difficult, that what has been said does not require any amplification from me, but I do think we must bear in mind that India's finances can never be free from some dependence like all other national finances on international relations and international finance. It is quite impossible to discuss Indian finance without taking into account the general question of international finance, although I quite agree that in regard to a vast number of the matters with which we are dealing, the Indian financial situation particularly in its constitutional aspects, presents its own particular facets for our consideration. If you bear this in mind I think it becomes

apparent that it is most difficult to discuss with any advantage the financial situation at the moment or even to arrive at conclusions upon what should be done in the immediate future. That seems to be really impossible at this moment, or at least undesirable at this moment.

A number of events have happened since we discussed finance last year, and some of them are important events, such as our going off the gold standard, the changes that have been made in India in consequence, and also the statements that have been made both by the then Secretary of State, Mr. Wedgwood Benn, who is here now, and by the Prime Minister, in relation to Indian finance.

I think the most important thing that we have to bear in mind in all these considerations is that, so far as I know, there is no precedent in the history of any two countries for the situation which exists between Britain and India in relation to finance. You get very little assistance from referring to the position in regard to other countries, or even other Dominions, because here the situation is different. It dates, no doubt, from the East India Company's position at that time, and since then the position of His Majesty's Government, by virtue of the position of the Secretary of State and of the Secretary of State in Council, to which reference has been made by Sir Tej Bahadur Sapru in calling attention to particular sections of the Government of India Act. Those relations make the position between India and Britain one of very close interdependence.

There is one general observation which I can make which I think will have the concurrence of everybody here. It has already been referred to by Mr. Pethick-Lawrence, but I should like to try to put it, if I may, in one simple sentence. There is one condition which must, to a large extent, dominate all that we are considering at the moment, and that is that it must be the purpose of India, just as it must be the purpose of all of us who are trying to arrive at agreement in these matters, to maintain the confidence of the investors in Indian Government securities. That must be done, for otherwise India will suffer immeasurably and with the result that not only her financial condition will suffer but all those who have to provide the revenues by taxation or otherwise will suffer also. It is of the essence of the matter, it seems to me, that we should strive to maintain the credit of India as high as possible, in order that the borrowing which has to be made—and which must be made, as anyone who has any knowledge of the Indian financial situation realises—either to meet maturities or for other purposes in the course of years may be made at the lowest rate at which you can borrow, for the lower the rate at which you can borrow, the better it is for India and the less she has to pay.

Now, having said that, I would myself deprecate discussion as to the present situation; I do not intend to follow the observations that have been made. They have been brief; I am not making any complaint with regard to them, but, to my mind, it would be invidious to attempt to deal with them. All I will say is that nothing that has transpired since our last meetings, since we

discussed these matters at the end of last year has changed my opinion in regard to the safeguards that must be required in arranging now the constitutional position in regard to India's finance.

It is quite true, as Sir Tej Sapru has said, that there are provisions in the Government of India Act which make charges—he said either a first or second charge. I do not think really that the precedence affects it at all. The obligation is placed upon India by the Statute to provide the expenditure out of the revenues, and the revenues must be dealt with for the benefit and the purposes of India. I raise no objection to that. I would, however, make one observation to you upon it, but I do hope we shall not, here, at this Conference, fall into the error which certainly I have seen in some press comments, especially those which have come from India, that because some declaration or provision that may be required and has been put forward at this Conference would have some advantage to investors in Great Britain, therefore it cannot be that that declaration or provision is in the interest of India. That I submit is a complete fallacy, and very little examination is necessary to demonstrate it. If you bear in mind what I think would have the unanimous approval here, that what we want to do is to maintain in dealing with Government loans and matters of that description the confidence of the investor, the fact that something that you are doing may help the investor in this country who has placed his money in sterling loans, and that it may stop a diminution in value which otherwise might occur, by some provision which you are going to make in the constitution, does not mean for one moment that that provision is not in the interests of India. It is obvious that they are consistent, that is that the interests of India would be consistent also with the interests of investors here. It seems to me to follow so obviously that I do not wish to labour it. I only desire to draw attention to an error which has certainly crept into a good many of the press comments that I have seen from India. The main purpose being the establishment of confidence, what has to be determined also is what steps could be taken and what the effect of those steps would be upon the investor in this country, in India and elsewhere. That of course is when you are dealing with the credit and the stability of the financial situation of the Government of India, which means India.

Now may I at the outset also make just one observation following what fell from Sir Tej Bahadur Sapru at the outset of his remarks, and was then followed by Mr. Pethick-Lawrence? I had occasion recently to make a statement with regard to it and I only repeat it now because from what Sir Tej has said just now there seems to be some notion that a change is being made in the situation now as compared with what it was when we first started the resumption of the Conference here. I want to state that for myself I maintain quite rigidly the view that I have expressed before that, whilst in favour of Provincial autonomy, I am also in favour of responsibility at the Centre of the Federal Government

which we are seeking to set up, and in my mind nothing that has happened has caused me to change those views. In my opinion they are part and parcel of the main principles upon which we are engaged at this moment.

Now I would desire to call attention, only for a moment or two, because I do not wish to detain you at any length, to some of the observations made both by Sir Purshotamdas Thakurdas and by Sir Tej Bahadur Sapru, especially those referring to the sections of the Government of India Act to which Sir Tej referred. I find the greatest difficulty at this moment in laying down any canons of financial administration in India in view of the situation as it stands, and certainly I would like to get rid of one subject, for myself at any rate, which has been referred to, not discussed at any length—and I quite appreciate the discretion of those who have spoken in not referring to it at any length—and that is the matter of currency and exchange. The view I took at the earlier stage was that currency and exchange should be dealt with by the Reserve Bank which should be established on non-political lines, and which, when established, would have the management of currency and exchange. That does not mean for one moment that it fixes the ratio. The ratio would be fixed by the Legislature, as it is now by the Act of 1927. That fixed it. But the management of the currency and exchange are quite different things, and the object of entrusting them to a Reserve Bank is that you may be enabled, by means of a non-political body consisting of experts, charged with the duties and also having the necessary powers, to preserve the stability of exchange and currency, and thus to maintain and even enhance the credit of India; and so far as I can see there is no way of dealing with that except by means of this Reserve Bank. Whether some temporary provision may be made by introducing a Council, assuming that you have once established your constitution, and that Council may be consulted and may express its views, I shall not go into at this moment, because it does not seem to me that that is an essential part of the management of the currency, although it may be very useful, as it certainly often is, to bring others in who may have their views in order that they may expound them and put them before those who are responsible. I do not propose to say a word further in regard to currency and exchange.

In relation to the external and internal loans, there again as to external loans I made my position clear last year, and I do not propose to re-state what I then said. As regards the internal loans, I agree that the statements that I made last year were not very definite as to the remedy that was proposed, and I think Sir Tej was perfectly right in saying that there was a considerable amount of discussion and that nothing definite was arrived at with regard to it. The only concern that I have with regard to internal loans is to protect, and to protect for the purpose of preserving financial stability and credit against the raising of loans at bad rates of interest, which would affect, the moment they were raised, the credit of India notwithstanding that they were internal loans.

For example—I only give it as an instance, and not for a moment suggesting that it will take place—suppose you have been raising loans here at 5 per cent., 5½ per cent., and even 6 per cent., and that it was proposed to raise the loan in India. Let me assume for a moment—I am not suggesting it will take place, but merely suggesting it for the purpose of an example—that it is raised at 8 per cent. The effect of that must be to reduce the credit of India in the eyes of British investors, and consequently to make some larger amount payable than would otherwise be payable if a loan of that character had not been raised.

The only intervention that I would desire in that respect would be to see that nothing of that sort takes place. I gave as an instance an unbalanced Budget, and I think I was a little misunderstood with regard to that. I did not mean one particular Budget; what I mean as I explained later, was the pursuit of a certain policy. I did not suppose for a moment it would be pursued, but if it was it would be necessary to take some stand in order to prevent the credit of India being most seriously affected. Personally, I should be satisfied in that regard if the assent of the Governor-General were required for the purpose of an internal loan. That does not seem to me to be unreasonable. In the ordinary course of events, if there is no serious risk of impairing credit, then, of course, the Governor-General would give his assent; but this, as it seems to me, would give some power of checking anything in the nature of financial administration which would impair the credit of India. That is all that I want with regard to that.

Now, Sir Tej Bahadur Sapru has referred to certification, and here I confess that I am not in accord with him, because it seems to me that the power of certification must be preserved, at any rate at present. I was struck, during the course of the argument, by his remarking, after having referred to the sections of the Statute, “What more could be required?” What it seemed to me he was leaving out of calculation altogether was the possibility that the Legislature might, for some reason, refuse to vote the taxes. Now, that is not an impossible state of things. To my great regret, it arose certainly on one occasion when I was Viceroy, an occasion when there was no real question of finance involved at all. There was no point of issue between us, no real dispute, but there was at that time some discontent with what was being done by Government, and, as a constitutional *démarche*, because really it was nothing else, the Finance Bill was rejected by the Assembly. Now, what is to happen if that takes place? I notice Sir Tej says things will go on as before; but they could not do so.

*Sir Tej Bahadur Sapru*: I should like, if I may, to make one suggestion, because I want to have the benefit of your advice upon it. Let us suppose you have the provision in the constitution that if the Legislature turns down the whole of the Budget, or refuses to raise any taxes, last year's Budget would come into force? There are precedents for that.

*Lord Reading*: I agree, but that would not meet the point that I have in mind. There are two things which must be borne

in mind. One is the restoration of demands which are made, and there is certification. Let me point out why. If the Army and external relations—to refer only to these two—are reserved to the Viceroy, he must—to use a phrase which I think was employed by Sir Tej Bahadur Sapru earlier in the discussion—have the power to implement the obligations that are placed on him. It is necessary to provide the money. If you have entered into a contract for the year, it is no use saying that, unless equally you give him the power to raise the money. He must have that. Of course if the Legislature is working in agreement with him, which we hope will be the case, the result will be that no difficulty will arise. But suppose this, for example, and you cannot leave it out of account, especially as I say it has happened once. During my time there were two occasions on which I had to certify. The one was a much more controversial point, and I am not referring to that, but the other that I have in mind so definitely is when it was simply rejected as a constitutional point, just to take up that constitutional position. The consequence was that, very much to my regret, I had to introduce the Bill as a recommended Bill for the purpose of certification if then rejected. It happened as those of you will remember who were there taking part in the Assembly. It happened and the Bill went through in the ordinary way; no difficulty ever arose about it at all and no question was ever raised that the taxes were not payable or ought not to be paid because they had not been voted by the Assembly but were certified merely by the Governor-General.

Now if there were not powers of this kind, which are very necessary as it seems to me, it would be impossible for the Governor-General to implement the obligations that are imposed upon him. It is not much good referring to other cases for this purpose, because, as I ventured to observe to you before, the situation is quite unprecedented. You will not find in any constitutions provisions of this character, it may be because the conditions do not exist. But here if you have the obligation to do a thing, there must be the power of being able to implement it either by asking for the further demands, or, if it becomes necessary, by certification. That it should never be resorted to would obviously be the best state of things that can happen; but the mere fact that there is the power inherent in the Governor-General by the constitution, if the condition should ever arise, at any rate will enable him to go forward and do what is necessary in order to carry on the duties imposed upon him.

Of course, it may be said, and I think it was certainly implied by the references that were made during the discussion to-day, that the power is already there if you have sections of the Statute, such as are now in the Government of India Act, because that is analogous to putting the expenditure on the Consolidated Fund. But then, of course, as all constitutional lawyers and those who have studied the financial conditions of Government know perfectly well, that is rather a figure of speech than anything else, the Consolidated Fund. It really means that the Governor-General

in the case of India, has the power of raising the money; that is of using the money from the funds that have come in from the revenues without having to go to the Legislative Assembly to have them voted. In other words, if he was responsible, let us say, for 47 crores expenditure, taking the figure as it now is for the Army, he must be able to find somehow 47 crores out of the revenue. He has not to have them voted on the assumption which we are at present discussing and on the system which has hitherto prevailed, but he draws them from the Treasury as the money comes in. That is to say, in other words, to put it quite simply, he has to dip into the till to take that money, but has not got to get the previous consent of the Legislature; but that is all that is meant by saying that a charge is on the Consolidated Fund. It means no more than that, and it gives no more security than that. If the revenues are not there, then of course he has not the money and his Consolidated Fund is of no use. I think you must not lose sight of all these considerations if you are putting upon him by these means certain obligations to defray the expenditure on Army and External Relations and so forth.

There is very little else, I think, that I want to refer to to-day, as I certainly am not anxious to take up much time in discussion. I took up a considerable amount of time when we last had this before us; but what I am most anxious about is that we should realise—and I would press it upon you very seriously—the situation as it is at the moment, and the undesirability of trying to be too precise at this present period during transition and during the present conditions of finance, not only of India, but of this country and of the world generally. I think, of course, that we should do everything we can to strive to arrive at agreement in respect of it, but I cannot help but make this observation, and I make it with a full sense of its responsibility—that if it were to be stated by Government at this present moment that the full responsibility for the finances of India are to be transferred from the present situation and the present control into that of India and a responsible Government set up there, I would hesitate very much in prophesying what the effect would be upon the financial position of India, but I do not hesitate in saying that it would be disastrous. It is not because of the fear of anything in India: I would beg of you to get that out of your minds; it is because the situation is so bound up with our own here—that is, in relation to investments that are made and responsibilities here in regard to Government loans and so forth. Roughly, the amount of money invested is somewhere about 350 million pounds sterling. The figure may not be exactly accurate, but it is near enough for the purpose, and in addition large sums have to be found annually in sterling. Those sums have got to be raised in sterling and if anything were done which frightened people here, made them lose confidence, the result would be really disastrous to the finances of India at the moment. I would press upon you not to get into your minds that that is because there is no confidence in India. It is not that. It is because the investing public here certainly



places its money, it is true, in Indian loans, relying upon the revenues of India to defray them, but also because it knows that the control, certainly hitherto, has been in the Secretary of State in Council, as is shown by the references that were made, and that it is essential that you should not disturb that, certainly at this moment when conditions are so difficult with regard to finances all over the world. I would beg you to remember that. I am not speaking for a moment as a member of the Government—I have no Government responsibility—but I am speaking my own views, and my own views in these matters are based upon considerations which I would beg you to believe are, I am convinced myself, in the best interests of India, with the desire of trying to reach some conclusion which would be agreeable to India and to ourselves, but which would maintain the confidence of investors in Indian finances and would, above all, consequently retain unimpaired the financial credit and the stability of India.

*(The Committee adjourned at 4-10 p.m.)*

*(The discussion on Financial Safeguards is continued on page 1197.)*

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PROCEEDINGS OF THE FIFTY-FIRST MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON WEDNESDAY, 25TH NOVEMBER, 1931, AT 11-0 A.M.

*Discussion on Order of Constitutional Development.*

**Mr. Wedgwood Benn:** Lord Chancellor, some of us would like to discuss such questions as the future of this Committee itself and the actual time table to be adopted by the Government in carrying out the proposals of the Committee. If you would allow some time for that before the Reports are made I think it would be a good thing, because naturally we should desire that any opinions expressed in this Committee should be embodied in the Report, so that they may be reported to the Plenary Session.

**Chairman:** Then will you go ahead now, please?

**Mr. Wedgwood Benn:** I will ask Mr. Lees-Smith to do so, although I think this would come better when we have finished the financial discussion, but before we make our final Report to the Plenary Session.

**Chairman:** We had better get it through now.

**Mr. Lees-Smith:** I am ready to start the discussion on this subject now, but I should like an opportunity for other members who may have something to say to contribute at any rate a few words on it, and I think that would come better, probably, after the discussion on finance. However, if you would not mind breaking into the discussion on finance now, I should like to say what I have to say.

*Chairman:* I think you had better say it now, Mr. Lees-Smith, I am in great sympathy with you, and I am quite sure that what you have to say will be very helpful.

*Mr. Lees-Smith:* I should like the Committee to realise, that although this has come rather quickly, I think that we are now on the most vital subject that this Conference has left to discuss, and therefore I should not like the fact that it is suddenly interjected into the other discussion to make the Committee think that this is by any means a secondary issue which is being decided.

I do not think it will take long but I think what will be said is exceedingly important.

*Chairman:* Yes, I am sure anything you say, Mr. Lees-Smith, is. The only thing is, if it is so important, as I am sure it is, do not you think we had better have the Prime Minister here?

*Mr. Lees-Smith:* Certainly. Well, we might decide that later, but I should like the Committee to know what I have in mind before we discuss that.

*Chairman:* Very well. I am very much obliged to you. What I will do is this: if you will go on now, I will convey the remarks to the Prime Minister. He is a very busy man and perhaps it would not be fair to ask him to come. At the present moment he is engaged in the Cabinet. Will you go on now please?

*Mr. Lees-Smith:* Lord Chancellor, the question that I want to raise is the question which was referred to in a number of the speeches yesterday but not fully developed. That is the question of "When is this federal structure that we are now discussing going to be brought into being?" I think, if you will permit me, a short discussion on that will in fact shorten the discussion on the Reports; because if that were clear in the minds of the Committee I think the discussions on the Reports would go through a great deal more easily than they may under present circumstances.

I would say this to the Committee: that at this present moment the prospect is that this Conference is going to end in failure, and I think that this short discussion that we shall now have is our last effort—the last effort any of you can make—to save it even at this moment. I would warn the members of this Committee not to wait for the Plenary Session, but, if they have any remarks to make, make them now. The Plenary Session is not a discussion; the Plenary Session consists of a series of speeches in which each man stakes out his position and the Government replies at the end; but there is no discussion in the sense that we know it round this table in this Committee.

I do not know. These are issues which lie on the knees of the Committee and on others, that we are in a very tragic position. There is in reality no unbridgeable difference on any of the issues that have been discussed on any Committee; and yet, owing to the fact that we do not get together sufficiently closely, this Conference is on the verge of disillusionment. If I may refer for a moment to another Committee—I cannot enter into it, but I do

not think there is an unbridgeable difference, even on the communal questions; and I would say this, that it is generally understood that the Government will bring into being at an early stage—at as early a stage as possible—Provincial autonomy. Now that cannot be done unless a settlement of the communal question is first of all reached. If the settlement of the communal question is reached for that purpose, it can then present no difficulty, or no insuperable difficulty, for the purpose of establishing a Central Government; and for our discussions here at this moment we need not I think deal with the communal question any further.

May I then say what has been the impression made on my mind by the discussions into which we have entered in the last few days? There was a certain unwillingness to enter upon these discussions in the last few days on the Army, on finance, and so on. I think anybody who has heard them will say that it was most fortunate that, owing to the action of this Committee, those discussions have taken place. They have been most temperate; they have been most guarded; they have been most creditable to everybody; and they have shown that the differences between what I might call an official Government view and the Indian view are far less than they appeared before these discussions took place.

That has been one of the results of this discussion, and I do say that on the discussion that we have had in the last two days—discussions on the question, so to speak, *vis-à-vis* the British Government and Delegates from India, certainly no unbridgeable differences have revealed themselves. What then is the question above all others which is the difficulty and on which it may be that our efforts may break down? It is this question: When is this Federal Government to come into being, and is it to come into being simultaneously with the Provincial Governments or later than the Provincial Governments? That is the question that has to be settled, and that is the question on which this Committee has the right to express itself.

That is the question on which I think the Government ought to hear the views of this Committee before a final statement is made, and I hope that the Committee will express itself now when it has got the opportunity, because I warn it that if it does not do so now it will not have an opportunity at the Plenary Session to express itself. There are two alternatives presenting a genuine difficulty to everybody. What are the two alternatives? One of them is this. The difficulty as I understand it is that Provincial autonomy can be brought into existence in perhaps eighteen months or a couple of years—some such period as that—but the Federal Government for various reasons cannot be brought into effective existence, with every effort in the world, in less than about three years or more. That is a genuine difference. It is not a question between England and India. It is a genuine administrative difficulty and it ought not to separate us at all. There is therefore a gap. Now there are two alternatives. One of them is that Provincial autonomy shall be established as early as possible and

that then the Federal Government shall be created at a later date. The other alternative is that the two should be established as far as possible simultaneously. It is between those two alternatives that a choice has to be made. Lord Reading sometimes speaks in his personal capacity and he tells us that he has no Government responsibility. May I therefore give my own views on that subject? I have discussed it with a great many members of this Committee and I am convinced myself that in spite of its difficulties the second alternative—the alternative of simultaneously bringing into being Provincial autonomy and Federal responsibility—is the safer of the two.

Now I am afraid that if the first alternative is carried out, if the Provincial Governments are established before the Federal Government, that they will be established amidst suspicion, that there will be a belief that the Federal Government is postponed into the indefinite future, that they will not be established with goodwill, that they may be wrecked before they are begun, that they will never have a proper chance of success and circumstances may then arise as a result of that, as a result of the general suspicion and ill-will, which will postpone the Federal Government to some indefinite future.

Now what are the disadvantages of the other alternative? The other alternative is that the two should be brought into being more or less simultaneously. The disadvantage is this. It will mean the establishment of Provincial autonomy at a later date than it could be brought into being taken by itself. It will mean that India will have to wait, and there is apprehension that India in waiting may grow restive, and that difficulties will occur on that account. With regard to that I would say this. I myself would hope and would believe that India would not be restive if it knew that the delay was due to the work that was being carried on all the time to bring Federal responsibility into being. And I would suggest this. I have a profound belief in the method of settling the problem of India by conference. I would suggest that the method of conference continue, that practically this Committee here should for this purpose be kept in being, that it should work in India with the Government of India, and that the Government of India should continuously work out the system of Federal responsibility and use its efforts to expedite it so that India would know that it was going to be brought into being at the earliest possible moment, and that its own trusted leaders were in continuous consultation. I cannot believe that in those circumstances India would be so disturbed that progress would be rendered impossible.

That is what I think should be done. This is so important. As I say, I believe this is our last chance of saving this Conference from disillusionment. It is so important that may I put almost dogmatically what is my opinion on the subject. I should like this Committee to pronounce in favour of the simultaneous proposal—the two together. I should like it to indicate—those who can indicate—that if an effort were being made in co-operation with

Indian opinion to work out Federal responsibility that the delay which that would mean in Provincial self-government would not lead to difficulty in India. I should like this Committee, or some similar Committee—broadly, this Committee—with the necessary additions, to continue in being and consult with the Government of India, so that the Indian problem would finally be settled by conference. I believe if that is done—and I do warn the members of the Committee they have to decide this now—if they do not speak now I doubt whether during our lifetime we shall speak to each other face to face again; we have to do it now at this moment. I think if this were done it is the last hope that we have of settling this Indian problem on the lines which we intended when this Round Table Conference was first called over a year ago.

*Sir Tej Bahadur Sapru:* I would like at the outset to express our sense of obligation to Mr. Lees-Smith, who I take it has spoken not only on his behalf but on behalf of his section of the Delegation. Speaking for myself, and for this block on this side, I may say that we deeply appreciate the spirit which has prompted him to speak in the manner in which he has spoken this morning. Like Mr. Lees-Smith, I stand also irrevocably committed to the method of conference. Although I am aware that a certain section of politicians in this country have already passed sentence of death on this Conference and on this Committee, still I think.....

*Chairman:* It takes a lot to kill me.

*Sir Tej Bahadur Sapru:* Yet, I think, Lord Chancellor, you will agree that it is only due to a person on whom the sentence of death has been passed that he should be allowed the final chance of saying what he has got to say.

*Chairman:* I am bound to say it usually is done; Yes.

*Mr. Jinnah:* But it does not change the sentence!

*Sir Tej Bahadur Sapru:* I venture, therefore, to say a few words as one who knows that our days here are numbered and who feels, like Mr. Lees-Smith, that it would be a tragedy if we were to go away without having achieved anything substantial, more particularly when, as Mr. Lees-Smith very rightly pointed out, the differences are not at all unbridgeable. Indeed, I would very strongly contest with anybody, high or low, who would maintain that the distance between one section and another is unbridgeable.

The main points on which we assembled this time to come to some conclusion were first of all Federation with responsibility at the Centre, and, secondly, corresponding responsibility in the Provinces related to the Centre. Although no official announcement has been made yet as to what is going to be the future constitution for India, I shall proceed on a similar assumption to that made by Mr. Lees-Smith this morning, that the air is thick with the words Provincial autonomy.

Now, let me make an absolutely clear and definite statement in regard to that matter. So far as I am concerned, I am an irreconcilable opponent of Provincial autonomy divorced from res-

responsibility at the Centre. I am not prepared to support it, nor am I prepared to advise my country to accept Provincial autonomy divorced from responsibility at the Centre. That is one of my deepest convictions, a conviction which I can trace back to my official days.

I refuse to believe, in the first place, that it is possible for you to give us genuine Provincial autonomy, an autonomy which will make us independent in some vital matters of the control of the Central Government or of the Great Mogul, the Secretary of State for India. But, assuming that your legal advisers can devise some sort of formula which will give us not what I would call a bogus Provincial autonomy, but a genuine Provincial autonomy, I would ask you to approach the question from this point of view. You yourselves have said repeatedly on public platforms and in the Press that it is no use giving to a people a constitution which they are not prepared to work. Have you satisfied yourselves that there is any considerable body of men in India at the present moment who are honestly prepared to work Provincial autonomy or who feel sufficiently courageous to work Provincial autonomy in the midst of what I imagine to be a great opposition in my country to a system of Provincial autonomy in advance of responsibility at the Centre? It is all very well for our friends to say that we must hold our souls in patience, that Provincial autonomy will inevitably lead to responsibility at the Centre. Frankly, I am in no mood, and I do say many of my countrymen are in no mood, to accept assurances of that kind. We are not going to allow our future to be prejudiced by accepting Provincial autonomy at this juncture, when we know that political opinion in England can change so rapidly as it has changed during the last few months; when we know that the number of our friends is very limited, that the number of our opponents is very large, that people still think of India as they used to think in the eighties or the nineties of the last century, or even ten years ago. Therefore, let me give this warning in the friendliest but the firmest possible language: that those of us who have stood by the Government in critical times, who believe in ordered government, who are anxious that India should be saved from a period of strife and turmoil and that we should be allowed to settle down to constructive work, will feel, and legitimately feel according to my view, that they have been let down by this Government. I hope things will never be allowed to reach that pass.

Well, Mr. Lees-Smith has raised the question of time. I entirely endorse his remarks; but if India can be genuinely convinced that the machinery has been set up, that the machinery will be constantly in working order, that something is being done to achieve the end which we all have in view, India will not be restive. On a point like that I believe I have got no right to speak with the authority with which Mr. Gandhi can speak. Once you convince the people that you mean business and that you are not going merely to feed us upon hopes which may be realised three years hence or thirteen years hence or longer, I think there is

enough patience in the country to approach the future in a spirit of confidence. But let there be genuine co-operation, and do not tell us that in your language and in your dictionary co-operation means only co-operation when we accept your views as the final views, when we accept that what you consider best for our interests is really the best, but let a true conception of co-operation arise. Co-operation means and ought to mean that we ought to be able to adjust our differences; that we ought to be able to find a common ground; that neither of us should feel that his views are being imposed upon the other. I am not a non-co-operator; I have never been a non-co-operator. Do not give me a chance of saying that it is the people of this country who have non-co-operated and taken a leaf out of the book of Mr. Gandhi, who has shown a spirit of co-operation on this occasion, be it said to his credit.

I, therefore, speak as a friend, and if I have spoken with a certain amount of feeling, I will beg you to assume, I will beg you to rest assured, that I have a very vivid idea of the dangers that you may be cultivating by manœuvring us back into what I call the Simon recommendations. Let there be no such feeling in my country. Let us not go back with that impression; and remember it is up to you to realise your responsibility in the matter, to see that your friends are not wiped off the picture. That is all, My Lord.

I would say only one word more. It should not be understood that I accept that a three years period is necessary for working out the details.

I am open to conviction.

*Chairman:* What do you think it should be?

*Sir Tej Bahadur Sapru:* Let your experts satisfy me that a three years period is required, and I will accept it, but if it is a question of choice between accepting Provincial autonomy now and waiting for three years, at the end of which time we are to get the whole thing, I would much rather wait for three years than accept Provincial autonomy now. We have been told that there is a very great anxiety that the Government here should give proof of their earnestness. I appreciate that anxiety. I value that anxiety, but I would only give this warning, that in attempting to show your earnestness you may do something which will make your position and make our position worse. That is all.

*Chairman:* I really cannot have a number of speeches on this for this reason. I have seen a letter\* in the newspapers to-day signed by a number of ladies and gentlemen and I shall assume that they all agree with what Sir Tej Sapru has said, and I shall so report to the Prime Minister. It is no use everybody speaking.

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\* The following is the text of the letter:—

"In view of the situation that has developed at the Round Table Conference and the repeated attempts during the last few days by members of the dominant political party in Parliament either to bring the proceedings of the Conference to an immediate end or to bring pressure to bear upon

I am going to read out the names. Sir Tej Sapru has just made his speech, Sir Chimanlal Setalvad is not on this Committee. I assume that he agrees. Sir Cowasji Jehangir is not on this Committee. I assume he agrees. Sir Phiroze Sethna is on the Committee. I assume that you agree?

*Sir Phiroze Sethna:* Entirely.

*Chairman:* Mrs. Subbarayan, I think you agree?

*Mrs. Subbarayan:* Yes.

*Chairman:* Mr. Sastri, I think you agree?

*Mr. Sastri:* I agree, but there are one or two remarks I should like to make.

*Chairman:* What are they?

*Mr. Sastri:* If there is a danger, My Lord Chancellor, of the step that Mr. Lees-Smith has spoken of being taken by the Government, and Provincial autonomy being introduced in advance of responsibility at the Centre, I should like to point out one grave danger there is of the country being not at all willing to accept it. I speak with a due sense of responsibility, and as I often do, I shall have the consolation of having spoken the blunt truth, even though it be unpleasant, to those whose habit it is only to listen to that which is pleasant. My Lord Chancellor, government

the Government not to make any declaration at the Conference itself, but to declare their policy in Parliament, we desire to issue the following statement:—

(1) It is our considered opinion that no political party of any standing in India will in the slightest degree favour the introduction of provincial autonomy as the first instalment with a mere promise of establishing responsibility on a federal basis in the future.

(2) The Conference was not in our opinion called for this purpose, and none of us would have taken the trouble to come to England to achieve merely provincial autonomy, which was, indeed, recommended by the Simon Report. We think in the first place that no genuine provincial autonomy can be established without responsibility at the Centre. Even if it could be established, we are clearly of the opinion that no party in India will be prepared to take it. And if it is intended to rely upon the support of any particular class or any minority among the people of India for the working of 'provincial autonomy', then we think that the position instead of being improved will become one of great complexity and instability, and will give rise to a situation which in the best interests of both countries must be avoided.

(3) If His Majesty's Government intend to take this step it must be understood that it will not be with our consent but wholly contrary to our advice, and the Government must be prepared to take full and sole responsibility for their action.

(4) We claim the early fulfilment of the declaration of His Majesty's Government made on January 19 last, which was explicitly reaffirmed only a few days ago by the Prime Minister on behalf of the National Government. A mere reiteration of it in a fresh declaration or in the preamble of a Bill for provincial autonomy, leaving the establishment of responsibility at the Centre to some future date, will receive no support from us and will be strongly resented in India as a complete breach of faith and as being wholly inadequate to the needs of the country."



in India is becoming more and more difficult. Strong measures may have to be taken in more Provinces than one, and if at this moment Provincial autonomy is granted in full to the people of India, there is no means of avoiding the suspicion that the present Rulers of India, having found their task in the Provinces exceedingly difficult, are anxious to shunt it off on to the shoulders of the chosen leaders of their own people. That would be an exaggerated charge, but we know that in times when political excitement runs high, charges are apt to be exaggerated, but if there is an element of truth in that, I should think that wise Rulers would shrink before they incur that charge. My Lord Chancellor, the danger further is this. If Provincial autonomy is granted in advance of responsibility at the Centre, there is every probability of these difficulties to which I allude being infinitely aggravated by the circumstance that the Centre is still unreformed and continues to irritate the politically-minded classes in India.

I am afraid I cannot continue for a few moments.

*Chairman:* I will come back to you in a minute, Mr. Sastri. I am going through the list. The next one is Mr. Ramachandra Rao. He is not a member of this Committee. I assume he agrees with Mr. Sastri. The next one is Mr. Mudaliyar.

*Diwan Bahadur Mudaliyar:* If you will permit me, I so rarely take part in the debates of this Conference, that I think I would not be trespassing on the indulgence of this Committee if I say a few words. I want to say this. The representative character of many of the Delegates at this Conference has been questioned, but I stand in the fortunate position of being able to say that I do represent a political party in my own country, a party which has been constantly referred to in debates in both Houses of Parliament in this country, and a party which has consistently co-operated during the last eleven years in working such a political constitution as has been open for Indian politicians to work in my country. I speak now on behalf of the non-Brahmin Justice Party in Madras, and I want to make it perfectly clear what the views of that party are, both because I am in close association with the leaders and followers of that party in my own country, and because during my stay here I have kept myself equally in close contact in correspondence, both by letter and by cable, with the views of my colleagues at the other end. I want to state that I agree almost entirely with what Sir Tej Bahadur Sapru has stated, that we as a co-operating section will find it almost impossible to work the scheme of Provincial autonomy divorced from the element of responsibility at the Centre.

If I might put it in perhaps a little different manner from that in which the Right Honourable Mr. Sastri has put it, it would be unfair to the Provincial administration to impose on it the consequences of quelling any agitation that is bound to arise owing to dissatisfaction at responsibility not being introduced at the Centre. If I were to go back to-morrow to my Province

and were to take up the responsibility of Provincial administration, it would be an intolerable burden on me or on my party to put down an agitation for which we are not responsible, an agitation which we are also bound to say is not illegitimate, an agitation for responsibility at the Centre. Therefore, I feel that a mere announcement of Provincial autonomy, or a Bill to promote Provincial autonomy without simultaneously providing for responsibility at the Centre will fall flat in the country, will put men like myself who are anxious to co-operate, in an absolutely bewildering and hopeless position, and will in fact wipe us out of the political picture if we do not take care of ourselves. It is not fair to the co-operating section, to those friends of the Britishers, to those who have tried to work the institutions you have given to us in the face of odium and risk. It is not fair to us that you should put us in that position. What will they say if we go back? They will say that one result of the Round Table Conference has been, as in fact was hinted on the last occasion, the separation of Burma and the acceptance of the Simon Commission Report.

I dread to think of the consequences of that attitude on the part of my countrymen, which at the same time I am bound to say I cannot reasonably criticise. I would, therefore, venture very earnestly, even at this eleventh hour when a feeling of despondency has been created even among optimists like myself, to urge that the acceptance of the alternative put forward by Mr. Lees-Smith and supported by Sir Tej Bahadur Sapru is the only course which can save my country from anarchy and chaos. I believe that as a co-operator it is my duty to place this view quite frankly before the Government, on my own behalf and on behalf of my party. I may add that the Delegates and certain other gentlemen who belong to my party and who are in London have been consulted by me and we have had a discussion, and they entirely support me in the view I have just put forward.

*Chairman:* Thank you very much, Mr. Mudaliyar; we are much obliged to you. The next gentleman is not a member of the Committee; he is Mr. Jadhav, who, I believe is a Mahratta representative. Then we have Mr. Tambe, and then my old friend Mr. Joshi. Do you want to say anything Mr. Joshi?

*Mr. Joshi:* I shall say only a few words in support of what Mr. Lees-Smith, Sir Tej Bahadur Sapru, Mr. Sastri, and Mr. Mudaliyar have said.

Lord Chancellor, as a representative of Indian Labour, I may say that we ask for immediate self-government for India not merely for sentimental or racial reasons. I have made it quite clear that we want self-government not because we want Rulers of **our own race and not** because it is self-government; we want self-government as an instrument for promoting the welfare of the masses of our country, and I feel that object will not be achieved if we merely introduce Provincial autonomy now and leave aside the introduction of real self-government in India.

Lord Chancellor, I have some experience of working in the reformed Legislative Assembly for over eleven years, and I can tell you from my experience that since the new Legislative Assembly was brought into being it has been very difficult indeed to get the people of the country and the members of the Legislature to devote their time to constructive work for the uplift of the masses. The attention of the Government, the attention of the Legislatures, and the attention of the people of the country is wholly devoted to the problem of winning self-government for the country.

The Government have to grapple with the question of keeping law and order in the country; they have no time. The people have no time for constructive work for the uplift of the masses of the country. We are, therefore, unwilling to wait any longer in order to get an opportunity to promote measures for the uplift of the masses of India. We feel that if mere Provincial autonomy is introduced and real responsible government is delayed, the country will again be plunged into agitation, and the attention of the people and the attention of the Government and of the Legislatures will be wholly engrossed in the work either of agitation or of keeping peace and order.

We therefore feel, Lord Chancellor, that the proposal to introduce Provincial autonomy only and delaying the introduction of real responsible government in the country will not be of any use, and all of us who have so far worked for promoting constructive measures for the uplift of the masses and the workers will have either to join the agitation or to take a political holiday for a long time. Well, Lord Chancellor, we are not willing to do either of these things.

*Chairman:* Thank you very much, Mr. Joshi. The next speaker is Mr. Jayakar.

*Mr. Jayakar:* Lord Chancellor, I strongly support Mr. Lees-Smith's remarks and those of Sir Tej Bahadur Sapru and Mr. Sastri.

There are so many considerations one could urge with force against the proposals which seem to be gaining ground every day; but, having regard to the short time at my disposal, I shall only address myself to one important consideration, in order that the Government may take note of it. When I received the invitation from the Viceroy of India that I should come and attend this Round Table Conference, I was assured that, for the first time in the history of India, the method of arriving at definite conclusions by the process of negotiation, agreement, and good will was going to be tried. Indian patriots had advocated this method of conference many, many years ago. But unfortunately, as happens to so many political proposals in India, it was accepted very late. The Indian Legislative Assembly asked for this method in 1924-25, but it was not till 1930 that a Round Table Conference was granted.

I accepted the invitation, My Lord. I was warned by many of my political opponents and friends, "Oh, this is only a dodge, a trap, and the Conference is going to end in dismal failure. You gentlemen are being asked to go to England; but you will be fooled by British diplomacy. Be careful. You will be kept there from day to day, fed on promises, and in the end you will find that you will have to return to India with nothing in your hands but with your brow marked with the stain of dismal failure." Notwithstanding all such fearful prophecies, I and my friends arrived here. We wanted to give Britain a chance—possibly the last chance—of settling the constitutional question by the method of conference and negotiation. There are other methods known to India of achieving its freedom, but I am one of those who thought that it was our duty to give to Britain this opportunity of settling this question, if possible, by negotiation and good will.

We came here, Sir. We gave our best. I am not here referring to the unpopularity which we faced in India; that is a personal matter, and perhaps a precious personal memory which will always be recalled with great pleasure. We gave our best to your Government from day to day as you, Lord Chancellor, have witnessed. We gave it last year; we gave it this year. Now we want to know what this method is leading to—is it failure or success?

Speaking frankly, anything short of Central responsibility coupled with federation, any proposal of a mere Provincial character, even though it may amount to Provincial autonomy, will mean a complete failure of the Round Table Conference. There are no other words with which I can characterise such a consummation of the Round Table Conference. As to Provincial autonomy, we could have had it, speaking of my Province only, in or about 1920. Speaking of Bombay from which I come, it is no secret that a popular Governor of that Presidency recommended in the year 1920 that Bombay should have Provincial autonomy as it was then understood.

Eleven years have passed since. We have met here for two years successively. We have given the best of our time and energy and now if we are offered mere Provincial autonomy, all I can say is that I regard such a consummation as a dismal failure of the Round Table Conference.

What will be the result, Sir? The result will be that the few people who believed in the efficacy of this method, who believe in the promises of England, who believe in the rectitude of the ideals of British rule, who believe that Britain means in the long run to do justice to India—this small group of people will disappear from the country; and, without seeming to use threatening language, I may say that you will have deliberately handed over the country to the forces of disorder, chaos, and it may be revolution. God's ways are very inscrutable, Sir. Perhaps it is His will that the way to India's freedom should lie through revolution.

I feel Lord Chancellor, having heard the discussion on this gods, as you say in your language. All that I can say now from my seat in this Committee is: "Be careful what you do. The issues are clear before you. My country has made up its mind to be free. The question is whether you will give it freedom by good will so that your connection with India is kept intact, so that commercial relations are maintained between the two countries, whether you will give India freedom by this method of good will, or by the other alternative of bitterness. It is for England to decide. I can only say that the country has made up its mind to be free and when three hundred and fifty million people seven thousand miles away have made up their minds to be free it is difficult for you to govern them at such a distance. You could not do it just across your own border three hundred miles away with people of your own race and culture and much less is it possible for you to succeed in the case of people seven thousand miles away, entirely different from you in religions, culture, and in everything that constitutes life. The choice lies before you. I do hope that you will decide rightly. All I can say is that we shall regard it as a dismal failure, and the fault will not be ours, if on our return India is handed over to chaos, disorder and revolution.

*Chairman:* Thank you, Mr. Jayakar. Mrs. Subbarayan, you did not understand, I think that I was calling on you for your opinion. I am going to ask you all in turn.

*Mrs. Subbarayan:* I feel I must say a few words as this is a very important subject. I know that when I express my views on this subject I voice the feelings entertained by a large section of women in India. I was very much perturbed by the rumour that the plan of the British Government was to include Provincial government in the new constitution, with a vague promise of some measure of responsibility at the Centre at some indefinite and uncertain date in the future. Such an offer I would regard as entirely insufficient in itself, apart from the practical difficulties of its application, into which I will not go now, but which have already been briefly dealt with by Mr. Lees-Smith and Sir Tej Saprú with whose remarks I fully agree. I would like to point out that at this moment the eyes of all India are not fixed on the Provinces, but are fixed on the Centre. It is the emblem of our nationhood. The reforms to be secured are going to be valued in India entirely by the degree of responsibility given at the Centre. A denial of this or an indefinite postponement of it will cause the bitterest disappointment throughout the length and breadth of India, through all sections and classes of the people. I know I am not speaking for myself alone—Mr. Jayakar has already referred to it—when I say that we dread to contemplate what form that disappointment will take.

But it is not only a disappointment. In my opinion, such an offer would not implement the undertaking given by His Majesty's Government at the last Conference through the lips of the Prime

Minister. Then, apparently, reforms at the Centre and in the Provinces were regarded as of equal importance and imminence. I will go further and say that the offer which it is now rumoured will be made to us will be considered not only different from the undertakings given last year, but also that it is not made in the spirit of a real desire to settle the Indian problem on the principles of goodwill and constructive co-operation. It is not in the wording of any formula, I would like to point out, that our nation will find agreement, but in the spirit which underlies their undertakings. Mistrust of the spirit in which we, the people of India, were treated by Britain has long been the key-note of our attitude to Britain, and it was only last year that this mistrust was to some extent dispelled by the spirit of good will apparent in the Round Table Conference negotiations, and in the British Government's pronouncement.

If the spirit of that pronouncement is contravened—and this rumoured deviation of policy would indeed be a contravention of it—then the mistrust increases a hundredfold. We shall have to return to India bearing with us a message of despair and disillusionment to a future which none can bring themselves to contemplate without the gravest alarm and anxiety. I do therefore earnestly ask the Government seriously to consider all the consequences of this policy which I earnestly hope they will not adopt.

*Mr. Sastri:* I believe with Mr. Lees-Smith, that the wiser and the safer plan is to wait for Provincial autonomy until the second step could also be made ready to start with it. For I am sure that if any interval is allowed to come between the two steps, not only will there be an atmosphere of suspicion and mistrust, but the interval would be occupied by acute political trouble, and here I wish to be followed with attention by all the members who sit round the table—it will not be only trouble caused by the malcontents in India that you all know about, but there are others from a different quarter and with different motives no less active in creating trouble. If trouble is not forthcoming, there are those who will create it for those who wish it. We have known it every time. You good unsuspecting people in this country who govern us from seven thousand miles away do not know them, but we live night and day amongst them and with them, and we know that where the politicians wish for trouble, without their asking for it or bidding others do it trouble will be made ready to hand for them. It is that which we wish to avoid. Do not let there be an interval between these two steps, for there is no doubt that that interval will be taken advantage of by mischief makers of every kind, and the interval will be indefinitely prolonged, and your best intentions will be frustrated.

I have only one more word to say. I remember once sitting in No. 10 Downing Street round a smaller table where those who are accustomed to bear the heavy responsibilities of government sat together. One who is no longer in the land of the living but who held great power spoke as Foreign Minister.

I well remember his words. Speaking of a certain part of the Empire from which trouble had come, he said, "I wish we had known the full extent of the danger; our local agents failed to apprise us of its reality and its magnitude." Well, perhaps often people here err or take insufficient care because they are not warned in time. Let nothing of the kind be said upon this occasion, for we have warned you again and again, solemnly and in every tone of earnestness.

I have been a friend of this Empire. I have admired the patience and the admirable qualities that have built it up. I have never hesitated to pay my homage to the greatness, to the glory, and, all things being considered, I should like to say, as a student of history, to the beneficence of this Empire. But I cannot shut my eyes to the fact that often when those who run this Empire have come to the cross-roads of events they have failed to listen to the voice of caution and to the voice of justice, and have taken a wrong step and lauded themselves and the great Commonwealth in confusion.

I do hope that upon this occasion the way of generosity, the way of peace, the way of human good will and human welfare will be chosen, and not that which is often pointed to by those who believe in the lower ideals of Imperialism, the way of harshness and the way of pride, for that no longer is the spirit of the world. It is in conflict with the spirit of humanity. Being adverse to the hopes of the race, it is bound to lead to failure and to disgrace. I am one of those who believe that somehow or other in the ears of those who have authority will be sounded the note of caution, and that we shall be found going the right way at this time, and we shall be found steering the ship of India and of Great Britain alike to the haven of mutual good will and safety.

My Lord Chancellor, I do hope and pray that justice and mercy, and wisdom will attend the few more sittings that we shall have of this Committee and of the Conference which is its parent.

*Chairman:* Thank you, Mr. Sastri. In one moment I shall call on Sir Samuel Hoare, but I should like first of all to say that the other two signatures to this appeal are Mr. Giri and Mr. Shiva Rao. They are not members of this Committee. The signatures were:—

Sir Tej Bahadur Sapru.

Sir Chimanlal Setalvad.

Sir Cowasji Jehangir.

Sir Phiroze Sethna.

Mrs. Subbarayan.

Mr. Sastri.

Mr. Ramachandra Rao.

Mr. Mudaliyar.

Mr. Jayakar.

Mr. Tambe.

Mr. Joshi.

Mr. Jadhav.

Mr. Giri.

Mr. Shiva Rao.

I think it was also signed by Mr. Lees-Smith.

*Sir Purshotamdas Thakurdas*: I have special reason to be grateful to Mr. Wedgwood Benn and Mr. Lees-Smith for having raised this question, because, for some reason or other which I have not been able to ascertain, I did not know of this letter which has been sent to the Press over the signatures of so many of my friends. I like to believe that it was owing to my not being present at the time when the letter was sent that the letter was not shown to me. But I wish to say on behalf of Mr. Jamal Muhammad, who is the President of the Indian Federation which I have the honour of representing here and of Mr. G. D. Birla, who is my other colleague, that we all three are unanimously and emphatically of the opinion which has been expressed here on this side of the table; and I regret very much that it was not possible for my friends to show us the letter and let us have the honour of signing that letter.

My Lord, I will not say anything at great length. I will remind you that yesterday, when I was speaking on the finance safeguards, I said I was oppressed by some of the rumours that were floating about, and I am very glad that through the efforts of our friends on the other side of the table we have got this opportunity of expressing our views. On behalf of the commercial community, I say that this offer of Provincial autonomy will be regarded as something which leads nowhere. If there are reserved still under control, the main arteries of the machine of Indian administration, what is there centred in the various Provinces and the Provincial administrations which will allow India to advance economically, and advance in the various fields, fiscal, financial, etc., which really matter to any Government which wants to do good and to develop its country?

I feel, Sir, that if trade and commerce are to be safeguarded in India, the best thing that the British Government can do is to see that the little good will which is still left—and there is a lot of it left to develop if you will only take the right step—is now watered with real substantial good will from this end and not by any such measure, which I may concede is being offered to us, perhaps owing to the political circumstances and pressure which appears so much on the surface to us who are not in the know of the inner secrets of the Cabinet. I am very apprehensive, Sir, that if this step which is being threatened is taken, Bolshevism and Communism in India will not have to be imported from across the borders, but I feel, and I say it with all the responsibility of my position here, that many in India will feel that the Government of India and His Majesty's Government are, perhaps unwittingly, planting that very dangerous plant in India by this action of theirs. The economic conditions are all such as will help any such effort, and that effort may be made in a manner which would require and baulk your most important and active Criminal Investigation Department in India. Let the Government not take a step which strikes us as being absolutely suicidal to the interests both of Great Britain and of India. We in India are completely fed up with any more experiments of a half-way house in this matter.



What we feel is that no reform will commend itself to India unless it is a substantial and whole-hearted reform at the Centre. Mere Provincial autonomy of the nature of which we have heard will lead us nowhere and in many cases would only make the remedy worse than the disease we are suffering from at the moment.

I have only one more word to say. The extremist press here which has been running down the Conference and the efforts of the Government in regard to this Conference have all warned the British public that if the Round Table Conference is to progress on the lines we want England may be bankrupt. I refuse to believe it. I think the people who write that do not know Britain's strength and vitality. The step that Government threaten to take will be the last straw which will break the camel's back. The camel's back is India's patience. I appeal to the British Cabinet not to miss this opportunity when we have here Mahatma Gandhi ready to look at facts and to go as far as he possibly can for the evolution of a system of government which will allow us to develop, to guide and to maintain the relations between India and England in a manner which may be to the lasting glory of England.

*Mr. Gandhi:* My Lord Chancellor, I tender my congratulations to Mr. Lees-Smith for being responsible for this debate, and I tender my congratulations to you, My Lord Chancellor, for having allowed this debate. I think that Mr. Lees-Smith has shown amazing optimism in initiating this debate. He has come as a physician with an oxygen pump and he is trying to pump oxygen into a dying body. I do not say that we are a dying body because of this rumour or threat of Provincial autonomy divorced from Central responsibility. In my own humble manner, almost from the commencement of these proceedings, I have been uttering words of warning and I was oppressed, and I said so in so many words, with a sense of unreality which dawned upon Sir Tej Sapru only yesterday, or as I happen to know, has been dawning upon him for the last few days, because he has given me the privilege of taking me into his confidence in common with his other friends and comrades, if I can also bracket myself as one of his comrades. Out of his ripe experience of administrative affairs, having held high offices in the Government, he has warned us of the danger of Provincial autonomy so-called. I am very often an unrepentant sinner. He had reasons for issuing this warning, especially in connection with me, because I had dared to discuss the question of Provincial autonomy with so many English friends who are responsible public men in this country, and he had heard of it, and so he gave me ample warning. It was for that reason that you find me as one of the co-signatories not to the document that has been placed before you, My Lord Chancellor, but to another similar document that was issued to the press about ten days ago and was addressed to the Prime Minister. I told him,

as I say here, that both he and the others who have spoken after him, and I, reached the same goal through different routes. Fools walk in where angels fear to tread. Not having had any experience of administration actually I felt that if Provincial autonomy was the Provincial autonomy of my conception I, for one, would not mind handling the fruit, feeling the thing and seeing whether it really answered my purpose. I love to meet friends, who may be opponents in policy, on their own platform and find out their difficulties, and find out also whether what they are offering is likely to lead one to the same place, and in that spirit and in that sense I ventured to discuss Provincial autonomy, but I found at once on discussion that what they meant was certainly not the Provincial autonomy that I meant, and so I told my friends also that I would be quite safe if they left me alone, that I was not going to sell the interests of the country out of a foolish conception of Provincial autonomy, or out of impatience to get something for the country. What I am anxious to do is, having come all these miles with the greatest diffidence, having come here to tender my whole-hearted co-operation to the Government and to this Conference, without the slightest mental reservation, and having applied that spirit of co-operation in thought, word and deed, to leave nothing undone, I have not hesitated even to go into the danger zone, and hence I have dared to talk about and discuss Provincial autonomy. But I have come to the conclusion that you, or the British Ministers, do not contemplate giving India that measure of Provincial autonomy which would satisfy a man of my mentality, which would satisfy the Congress, and which would reconcile the Congress to taking up Provincial autonomy although there may be delay in getting responsibility at the Centre.

At the risk of taking up a little of the time of this meeting, let me make my meaning clear, because here too I am adopting a somewhat different line of argument, and I am most anxious not to be misunderstood. Let me take, therefore, one illustration. I want to take for my illustration Bengal, because it is one of the Provinces to-day in India which is deeply affected. I know that there is a terrorist school active in Bengal. Everybody ought to realise by this time that I can have no manner of sympathy with that terrorist school in any shape or form. I am as convinced as I have ever been that terrorism is the worst kind of action that any reformer can take up. Terrorism is the very worst thing for India in a special manner, because India is a foreign soil for terrorism to flourish in. I am convinced that those young Indians who are giving their lives for what they consider to be a good cause are simply throwing away their lives, and that they are not bringing the country by one inch nearer to the goal, which is common, I hope, to us all.

I am convinced of all these things, but, having been convinced of them, supposing that Bengal had Provincial autonomy to-day, what would Bengal do? Bengal would set free every one of the

détenus. Bengal would not hunt down the terrorists—an autonomous Bengal, I mean—but Bengal would try to reach these terrorists and convert these terrorists, and I should approach them with every confidence and wipe out terrorism from Bengal.

But let me go a little step further, in order to drive home the truth that is in me. If Bengal was autonomous, that autonomy itself would really remove terrorism from Bengal, because these terrorists foolishly consider that their action is the shortest cut to freedom; but, having attained that freedom, the terrorism would cease.

To-day there are a thousand young men, some of whom, I would dare swear, have absolutely nothing in common with the school of terrorism, a thousand young men who have not been tried and who have not been convicted; they have all, every one of them, been arrested on suspicion. So far as Chittagong is concerned, Mr. Sen Gupta, who was Lord Mayor of Calcutta, who was a member of the Bengal Legislative Council, and who was also President of the Provincial Congress Committee in Bengal, is here to-day. He has brought to me a report signed by members of all the parties in Bengal in connection with Chittagong, and it is sad reading. It is painful to read this report, but the substance of this report is that there has been an inferior edition of the Black and Tans in Chittagong—and Chittagong is not a place of no importance on the map of India.

We now see there has been a flag-showing ceremony, and in making this demonstration all the military forces have been concentrated together in Calcutta, and these demonstrations have gone through ten streets of Calcutta. At whose expense, and what will it do? Will it frighten the terrorists? I promise you it will not frighten the terrorists. Will it then wean the Congressmen from Civil Disobedience? It will not do so. The Congress are pledged to this thing. Suffering is the badge of their tribe. They have determined to go through every form of suffering. It cannot, therefore, frighten them. Our children would laugh at this show, and it is our purpose to show the children that they must not be terrified, they must not be frightened by this display of artillery, guns, air force, and so on.

So that you see what is my conception of Provincial autonomy. All these things would be impossible; I would not allow a single soldier to enter the Province of Bengal; I would not pay a single farthing for the upkeep of an Army which I may not command. In such Provincial autonomy you do not contemplate a state in Bengal whereby I can set free all these détenus and I can remove from the Statute book the Bengal Regulation III. If it is Provincial autonomy, then it is independence for Bengal precisely in the same manner as that responsible Government I have seen growing up in Natal. That is a little colony, but it had its own independent existence; it had its own volunteer force and so on. You do

not contemplate that thing for Bengal or any of these Provinces. It will be the Centre still dictating, still ruling, still doing all these things. That is not the Provincial autonomy of my conception. That was why I said if you present me with that live Provincial autonomy, I shall be prepared to consider that proposition; but I am also convinced that that autonomy is not coming. If that autonomy was coming we would not see all these protracted proceedings that have taken place here; then we would have managed our own affairs in an entirely different manner.

But what really grieves me still more is this: We have all been brought here with one single purpose. I have been brought here specially through that very pact in which it is written that I was coming here to discuss and to receive really responsibility at the Centre: Federation with all its responsibility—safeguards undoubtedly—safeguards in the interests of India. I have said in season and out of season that I would consider every safeguard that is necessary. I personally do not really consider, with Mr. Lees-Smith or anybody, that all this constitution building should take all these long years—three years. He thinks of Provincial autonomy in eighteen months. My folly tells me that all this time is not necessary. Where the people have made up their minds, the Parliament has made up its mind, the Ministers have made up their minds and the public opinion here is ready, then these things do not take time. I have seen them not taking time where there has been one mind applied; but I do know that there is not one mind applied, but there are many minds, all following their own course and all perhaps with a disruptive tendency. That being so, I feel convinced that, in spite of this debate, not only is there going to be no responsibility at the Centre, but no tangible result coming out of this Conference. It hurts me, it pains me, that all this precious time of British Ministers, of the nation and of all these Indians who have come here, all of us, should have been wasted; but I am very much afraid that, in spite of this oxygen pump, the result will be nil.

I do not say that the result is, therefore, bound to be that Provincial autonomy will be thrust down our throats. I do not really fear that result. What I fear is something still more dreadful—that nothing at all is going to come out of this thing but terrible repression in India. I do not mind that repression; repression will only do us good. If we have repression in the right time, I will consider that also as a very fine outcome from this Conference. Repression has never done harm to a single nation which is sailing for her destined goal with a fixed determination, for that repression is really an oxygen draught, though not the draught that Mr. Lees-Smith has administered.

But what I fear is that the slender thread which I had again built up of co-operation with the British nation and with British Ministers is about to snap and that I should again declare myself

a convinced non-co-operator and civil resister—that I should redeliver this message of non-co-operation and civil resistance to the millions of India, no matter how many air balloons will float over India or how many tanks will be brought to India. They will have no result. You do not know to-day that they produce no results even upon the tender young children. We teach them to dance with joy when bullets are flying about them—they are like so many crackers. We teach them to suffer for the freedom of their country. I do not despair. I do not think that because nothing happens here there will be chaos in the land. I do not think so. Not so long as Congress remains untarnished and non-violence goes forward throughout the length and breadth of India undiminished.

I have been told so often that it is the Congress that is responsible for this terrorism. I take this opportunity of denying that with all the strength at my command. On the contrary, I have evidence to show that it is the Congress creed of non-violence which up to now has kept the forces of terrorism in check. We have not succeeded to the fullest extent—I am sorry—but as time goes on we hope to succeed. It is not as if this terrorism can bring freedom to India. I want freedom precisely of the same type, only fuller, as Mr. Jayakar. I want full freedom for the masses, and I know that terrorism can do no good to the masses. The masses are silent and disarmed. They do not know how to kill. I do not talk of individual instances, but the masses of India have never moved in that direction.

Wanting that freedom for the masses, I know that this terrorism can do no good whatsoever. Whilst on the one hand Congress will fight British authority and its terrorism, legalised, so also will Congress fight terrorism, illegal, on the part of youth. Between these two what I feel is that there was this course of co-operation opened up for the British nation and for me by Lord Irwin. He had built this bridge, and I thought I was going to have a safe passage. I had a safe passage, I have come here, and I have come here to tender my co-operation. But I must confess to you that, apart even from what Mr. Lees-Smith has said, and from what has been said on this side by Sir Tej Sapru and by Mr. Sastri and the other speakers, the limited responsibility at the Centre which they have in view would not satisfy me.

I want that responsibility at the Centre that will give me, as you all know, control of the Army and Finance. I know I am not going to get that here now, and I know there is not a British man ready for that, and, therefore, I know I must go back and yet invite the nation to a course of suffering. I have taken part in this debate because I wanted to make my position absolutely clear. What I have been saying to friends in private sitting-rooms with reference to Provincial autonomy I have now said openly at this table, and I have told you what I mean by Provincial autonomy and what would really satisfy me. I close

by saying that I sail in the same boat as Sir Tej Bahadur Sapru and others, and I feel convinced that real Provincial autonomy is an impossibility unless there is responsibility at the Centre, or unless you are prepared to so weaken the Centre that the Provinces will be able to dictate to the Centre. I know that you are not prepared to-day to do this. I know that this Conference does not conceive a weak Centre when this Federal Government is brought into being, but that it conceives a strong Centre.

A strong Centre governed and administered by an alien authority, and a strong autonomy, are a contradiction in terms. Hence I feel that Provincial autonomy and Central responsibility have really speaking to go together. But I say again that I have an open mind. If somebody will convince me that there is Provincial autonomy, such as I have conceived for instance for Bengal, available, I would grasp it.

*Chairman:* Thank you, Mr. Gandhi. Do you wish to associate yourself, Pandit Malaviya, with what Mr. Gandhi has said?

*Pandit M. M. Malaviya:* Yes, but I should like to add a few remarks.

*Chairman:* Yes, certainly.

*Pandit M. M. Malaviya:* My Lord Chancellor, I feel that the very grave situation which has arisen demands that we should speak out our minds and leave no occasion for any friends in England to be in a state of doubt as to what is likely to happen. The question of self-governing India is an ancient question. For five years and more the Indian National Congress has been asking for the establishment of full self-government in India. In recent years when steps were taken to introduce reforms at the instance of the Congress, when the Montagu-Chelmsford Report was published and it was found that Mr. Montagu and Lord Chelmsford reported that there should be no responsibility introduced at the Centre, but that Provincial autonomy should be worked for ten years, and after that the Statute should be revised, and the question of introducing responsibility at the Centre should be considered, I published a criticism of the proposals, and I beg to quote from what I said in that criticism in order to show that the views I am now expressing are not views formed only on this occasion, but that it has been the feeling of educated Indians for several decades now. I said, with reference to the proposal that there should be no responsibility introduced at the Centre:—

“ It oppresses my soul to think that during this period—the next ten years—the Government of India, which, as I have shown above, has failed to build up the strength and prosperity of the people to the extent it should have done, should continue practically unchanged, and that the representatives of the people anxious to promote the good of their fellow men should still have to bear the pain and the humiliation of having no determining voice in the govern-

ment of their country. In the highest interests of humanity, as represented by the three hundred and twenty millions of this land, and for the good name of England, I earnestly hope that this will not be so, and that the statesmen of England will see that the Government of India is brought to a reasonable extent under the control of the people whose affairs it administers. Mr. Montagu and Lord Chelmsford have well described the effects of the war on the Indian mind. Let the statesmen of England ponder whether it will be reasonable to expect the people of India to be satisfied with any scheme of reform which will still keep them out of all power in the Central Government of their country."

Now, My Lord, that was an opinion which was held by all educated men throughout India. At the Congress which met at Amritsar the matter was strongly debated, and my friend, Mahatma Gandhi, and I stood for co-operating with the Government in the matter of the Reforms and we were happy that we were able to persuade Mr. C. R. Das, and other leaders of the National Party, to agree to work the Reforms for what they were worth, and to continue our efforts to obtain responsibility at the Centre.

We did continue our efforts, but the ten years which have passed have confirmed and deepened our conviction that it is not possible to produce any effect on the administration of the country unless responsibility is given to the representatives of the people in the Central Government.

It was for this reason that for three years, under Mahatma Gandhi's advice, many members did not take part in the Assembly and in the Councils. After three years, when the party decided to go into the Councils, one of the first resolutions which the Swaraj Party brought before the Government of India was, to ask for the establishment of responsible government at the Centre. It was known as the National Demand and I am glad to think—

*(Pandit Malaviya's speech was continued on 26th November, 1931.—See page 1219.)*

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*Sir Samuel Hoare:* I wish to intervene in the debate—I would gladly have intervened earlier, but out of courtesy to the members of the Committee I did not do so—because I think I should have said something which would have avoided a good many of the alarmist statements which have been made during the morning. It seems to me that we run a great risk of drifting into an atmosphere of melo-dramatic tragedy. A number of most alarmist statements have been made this morning. It has been assumed I suppose from headlines in the press. Those of us who live in England and who know the English press pretty well do not attach too much importance to headlines in the press, to whatever party the particular newspaper may owe its allegiance. It seems to have

been hastily assumed, first of all, that the Government have irrevocably made up their minds upon a course of policy; secondly, that the Government have also decided to break pledges that they have given over and over again; and thirdly, that the Government have decided to bring to an end the policy that they have consistently adopted in spirit and in principle of trying to obtain a settlement of Indian constitutional questions by the method of conference and agreement. Let me, Lord Chancellor, say quite definitely that there is no ground for any of those suspicions at all. I take them in order.

First of all, that we are embarking upon a period in which we are going to abandon the attempt to find a solution of these very difficult constitutional problems by agreement. That is not so, and it will be made quite clear before the end of the Conference that we intend, so far as you allow us, to continue this definitely considered policy of attempting to advance by agreement and by conference. Secondly, it has been assumed this morning that the Government have irrevocably made up their minds upon a certain course of policy and upon a certain course of policy that is assumed to involve breaches of pledges given by us in the past. Lord Chancellor, that is not so. The Government are doing what I should have thought any sensible Government would do—they have been engaged almost incessantly during the last few days and weeks in attempting to gather representative Indian opinion and, particularly, representative Indian opinion from the members of this Committee. It is common knowledge—indeed, it has already been stated in the press—that a number of these interviews have been taking place in the course of the last two or three days between the Prime Minister and the leading representatives of Indian opinion in the Conference. These discussions are still going on, and it would seem to me to be the height of folly—apart from the height of discourtesy—that we should go through the farce of discussion of this kind when we have already irrevocably made up our minds upon any policy. That is certainly not the course that the Prime Minister and the Government have pursued. Quite honestly, and with an open mind, we have been discussing with representatives of Indian opinion in the Conference these very difficult questions, and let us not disguise from ourselves the fact that these questions are very difficult questions.

They are very difficult questions for this reason: that we have found in the course of these discussions that a number of problems that we had hoped would have been solved this year are not solved. What we had hoped might have proceeded more quickly twelve months ago will now take a longer period of time. In view of that fact—and it is a fact that I think has been admitted by every member of this Committee—we have been considering what is the best course, first of all, to carry out our pledges; secondly, for carrying out our pledges at the earliest possible date; and thirdly, for making quite clear both to the world of Great Britain



and the world of India that it is still our intention to try and find a solution of these questions at as early a date as we can with mutual good will.

That, Lord Chancellor, is the exact position of to-day. We are to-day having more of these discussions. We are considering very carefully the grave issues to which allusion has been made this morning, and when we ask you to come and consult us, we ask you because we wish to hear your views, and not because we have already made up our own.

That, Lord Chancellor, is in a sentence or two the exact position as it is to-day. After this discussion I shall, of course, and so will you, convey to the Prime Minister the views that have been expressed by several influential members of the Committee. Those views have all expressed one view, and no doubt a very weighty view; but it is obvious to everyone that even upon the kind of questions that we have been discussing this morning, there is no unanimity, even though there may have been unanimity in the speeches this morning. What I will undertake to do is, to see that the views which have been expressed by several important members of the Committee this morning will at once receive the very careful attention of the Prime Minister.

Now, Lord Chancellor, I do not think there is anything else I need add to what I have said. I must not be drawn, in a discussion of this kind, into a debate with Mr. Gandhi on administrative questions, but I should like, in fairness to the administration of the Government of India, to say that I do not agree with the picture that he has this morning painted of what is going on in Bengal. I have this morning written a letter to Mr. Gandhi, which I think is on its way, asking him to come to the India Office, when we would explain to him what we believe to be the real state of affairs.

I have now told the Committee quite frankly and unreservedly what the position of affairs is, and I hope, having said what I have, we can dissipate this atmosphere of tragedy and panic into which so many members of the Committee have drifted.

*Mr. Wedgwood Benn:* There is one thing I should like to ask, Lord Chancellor. The Secretary of State has told us that what has been said will be conveyed to the right quarters. I presume it will go into a Report by this Committee to the Plenary Session, so that it may be put in proper order. That would be the normal course. I should like to ask, however, whether he will tell us at any time what the decision of the Government is and what is their considered view after hearing the opinions expressed.

*Sir Samuel Hoare:* Obviously, the Government will have to announce their decision, but when and how I cannot say this morning.

*Mr. Wedgwood Benn:* But will it be at a time when it will be subject to review by this Committee?

*Sir Samuel Hoare:* I cannot say that without consulting the Prime Minister; you could not expect me to do so.

*Mr. Wedgwood Benn:* If the Prime Minister were willing that the general trend of the Government's mind should be made known to the Committee, would the Secretary of State find some means of conveying it to the Committee before the Committee dissolves?

*Sir Samuel Hoare:* Obviously, I cannot give a pledge as to that without consulting the Prime Minister. I will convey to the Prime Minister your view on the point.

*Mr. Wedgwood Benn:* The view of the Committee; my personal view is nothing.

*(The Committee adjourned at 1-10 p.m. and resumed at 2-30 p.m.)*

*Chairman:* Your Highnesses and Gentlemen, the discussion this morning has been extremely interesting, although I am bound to say it has taken me a little by surprise. Mr. Lees-Smith was good enough to tell me as we came in that he was going to raise that sort of question, and I am very grateful to him for not telling me till this morning, because if he had told me last night I should have had a sleepless night. I should like to think a little bit about that, to think a little more carefully what should be done. Therefore subject to your approval, I would rather take the remainder of that discussion to-morrow. We shall then all have time to consider it.

*Mr. Jinnah:* My Lord Chancellor, I do not intend to say anything about the course you have proposed, but I would beg of you to-morrow—I hope you will not have a sleepless night—but to-morrow, when you have had a sound sleep and when you come here, please give us your definite ruling. I want your definite ruling on the points that have been raised by Mr. Lees-Smith. I understand his points to be that this Committee has got to consider these questions:—First, Provincial autonomy to be established as soon as possible, and the question of responsibility to be explored and considered. It might come into being later on, though I would not mention the period. Secondly, this Committee must express its opinion on the question that the Provincial autonomy and the responsibility at the Centre must come into being simultaneously. Question No. 3: This Committee also must express its opinion as to the procedure and the methods which should be adopted by the Government if the second alternative is recommended by this Committee. Now I want your ruling definitely that those are the questions which will be discussed by this Committee, and that you will incorporate the opinion or the conclusions of this Committee in your Report. When you give your rulings on these points, then we shall have to consider our position and express our views if we are advised to do so.

*Chairman:* Might I ask only one question: Are you for or against a Report?

*Mr. Jinnah:* That is for you to decide.

*Chairman:* No, I cannot decide what you are for. How can I decide what you think?

*Mr. Jinnah:* I say that if that is the desire, that it should be in the Report, we are not going to stop it.

*Chairman:* Just one moment. It is not my personal desires at all. The only point is, I understand—I do not know whether it is correct—that some people would rather like this to be incorporated in the Report. Is that your wish or not?

*Mr. Jinnah:* I say if that is the desire and the general wish of this Committee, whatever views we will express on this question, our views will also be incorporated in the Report.

*Chairman:* Certainly, yes; that is right enough no doubt. As far as I can see at present there are a good number of people with one view. I shall not put in the Report everybody who says that; a large number of people say that. I will record your view, certainly.

*Mr. Jinnah:* And if we decide to express our views, then no doubt they will be incorporated in the Report.

*Chairman:* Most certainly, if there is a Report.

*Mr. Jinnah:* If there is a Report. Lord Chancellor I will tell you why I am anxious about this. Please do not misunderstand me.

*Chairman:* No, no.

*Mr. Jinnah:* I am anxious about this in this way. Let us know definitely where we stand and what we are doing. I mean I think it is fair we should at least know what we are doing and not go on in a haphazard way and discuss this for half an hour or two hours, and then leave it on one side. Then again we do not know what we have done or where we are.

*Chairman:* No, no.

*Mr. Jinnah:* Therefore I want you to give us a definite ruling as to what you propose to do so far as this Committee is concerned. Then we shall have to consider whether to express our views or whether we shall reserve our opinions, or whether we want our views to be incorporated in the Report. It is for us to consider that.

*Chairman:* Yes, that sounds very logical.

*Mr. Jinnah:* It is perfectly logical, and I want to be logical and practical also.

*(The discussion on Order of Constitutional Development is continued on page 1210.)*

*Consideration of the Draft Fourth Report on Defence and External Relations.*

*Chairman:* If you will kindly take the Report in your hands on Defence and External Relations, I propose to do what we have always done before, to read it straight through without comment; then, after having read it straight through, I will take it paragraph by paragraph. At the end of that I will ask Mr. Gandhi to continue the debate upon Finance.

Here is the Report.

*(The Chairman here read the paragraphs of the Draft Fourth Report dealing with Defence and External Relations.)\**

1. The Committee when discussing the subjects covered by this Report, *viz.*, Defence, External Relations, Financial Safeguards, and Commercial Discrimination, did not have the advantage of hearing the views of the Muslim members of the British Indian Delegation who reserved their opinion on such questions until such time as a satisfactory solution had been found of the problems which confronted the Minorities Committee. Some other representatives of minorities similarly reserved their opinion.

2. Our consideration of the question of Defence in its constitutional aspect is based on the principle enunciated in the Defence sub-Committee at the last Session that "The defence of India must to an increasing extent be the concern of the Indian people, and not of the British Government alone."

3. The view was strongly put forward by some members that no true responsibility for its own government will be conferred on India unless the subject of Defence (involving, of course, the control of the Army in India, including that of the British troops) is immediately placed in the hands of an Indian Ministry responsible to an Indian Legislature, with any safeguards that can be shown to be necessary.

4. The majority of the Committee are unable to share this view. They consider that it is impossible to vest in an Indian Legislature during the period of transition the constitutional responsibility for controlling Defence, so long as the burden of actual responsibility cannot be simultaneously transferred.

5. The majority of the Committee, therefore, reaffirm the conclusion reached in the sub-Committee at the last Session that "the assumption by India of all the powers and responsibility which have hitherto rested on Parliament

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\* These paragraphs, as amended in consequence of the ensuing discussion, are printed as paragraphs 1—12 of the Fourth Report of the Federal Structure Committee. (See pages 1265 to 1267.)

cannot be made at one step, and that, during a period of transition, the Governor General shall be responsible for Defence,"\* being assisted by a "Minister" of his own choice responsible to him and not to the Legislature.

6. At the same time there is no disagreement with the view that the Indian Legislature must be deeply concerned with many aspects of Defence. It is undeniable that there can be no diminution of such opportunities as the present Legislature possesses of discussing and through discussion of influencing Defence administration. While the size, composition and cost of the Army are matters essentially for those on whom the responsibility rests and their expert advisers, yet they are not questions on which there can be no voicing of public opinion through constitutional channels. The Legislature would thus continue to be brought into the counsels of the Administration in the discussion of such outstanding problems as the carrying out of the policy of Indianisation. Further, there must be correlation of military and civil administration where the two spheres, as must sometimes inevitably be the case, are found to overlap. In the latter connection the suggestion was made that a body should be set up in India analogous to the Committee of Imperial Defence in Great Britain.

7. To secure this measure of participation, various suggestions were made, the cardinal feature of which, in almost all instances, was the precise position to be assigned to the "Minister" appointed by the Governor General to take charge of the Defence portfolio. It was assumed that his functions would roughly correspond to those of the Secretary of State for War in the United Kingdom. Among the more important proposals made were the following:—

(i) The "Minister", while primarily responsible to the Governor General, should as regards certain aspects only of Defence, be responsible to the Legislature.

(ii) The "Minister", though responsible to the Governor General, should be an Indian; and he might be chosen from among the Members of the Legislature.

(iii) The "Minister", of the character contemplated in (ii), should be considered to be a Member of the "responsible" Ministry, participating in all their discussions, enjoying joint responsibility with them and in the event of a defeat in Legislature over a question not relating to the Army should resign with them, though, of course, remaining eligible for immediate re-appointment by the Governor General.

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\* See paragraph 11 of the second Report of the Federal Structure sub-Committee.

8. While some of these suggestions contain the germs of possible lines of development it is impossible to escape from the conclusions (a) that, so long as the Governor General is responsible for Defence the constitution must provide that the Defence "Minister" should be appointed at the unfettered discretion of the Governor General and should be responsible to him alone, and (b) that this "Minister's" relations with the rest of the Ministry and with the Legislature, must be left to the evolution of political usage within the framework of the constitution.

9. The view was put forward that, while supply for the defence services should not be subject to the annual vote of the Legislature, agreement should be sought at the outset on a basic figure for such expenditure for a period of, say, five years, subject to joint review by the Legislature and representatives of the Crown at the end of such period, with special powers in the Governor General to incur expenditure in cases of emergencies. The details of any such plan should receive further careful examination.

10. Very similar considerations to those governing the constitutional treatment of Defence apply in the case of the subject of External Relations, and in general the views expressed by members of the Committee on this subject followed closely their opinions regarding the constitutional provisions in relation to Defence. In particular the majority of the Committee reaffirm the view taken in the Second Report of the sub-Committee (paragraph 11) that the Governor General should be responsible for External Relations.

11. There is, however, a difficulty in connection with External Relations which hardly arises in the case of Defence, *viz.*, that of defining the content of the subject. The reserved subject of External Relations would be confined primarily to the subject of political relations with countries external to India and relations with the frontier tracts. Commercial, economic and other relations would fall primarily within the purview of the Legislature and of Ministers responsible thereto, in so far, however, as questions of the latter character might react on political questions, a special responsibility will devolve upon the Governor General to secure that they are so handled as not to conflict with his responsibility for the control of External Relations. There will accordingly be need for close co-operation, by whatever means may prove through experience most suitable for securing it, between the "Minister" holding the portfolio of "External Relations" and his colleagues the "responsible" Ministers.

12. Some misunderstanding may have been caused by the description, in paragraph 11 (ii) of the sub-Committee's second Report, of External Relations as including "Rela-

tions with the Indian States outside the Federal sphere". As set out in the Prime Minister's declaration at the close of the last Session, "The connection of the States with the Federation will remain subject to the basic principle that in regard to all matters not ceded by them to the Federation their relations will be with the Crown acting through the agency of the Viceroy".

*Chairman*: Now will you be good enough to go back to the first paragraph? Are there any comments on paragraph 1, paragraph 2, paragraph 3, paragraph 4, paragraph 5?

*Pandit M. M. Malaviya*: In the last line but two of paragraph 5, it says, "The Governor General shall be responsible for Defence, being assisted by a 'Minister' of his own choice". I suggest that we should say, as we discussed it, "by an Indian Minister of his own choice".

*Chairman*: That comes in later. I put it in later. You are quite right to draw attention to it. We are coming to that.

*Pandit M. M. Malaviya*: With regard to paragraph 6. In that paragraph you say:—

"While the size, composition and cost of the Army are matters essentially for those on whom the responsibility rests and their expert advisers."

Does that mean that the responsibility rests upon the Legislature, or is it on the Governor General?

*Chairman*: What I am saying there is this: "On whom the responsibility rests" for Defence. He must be the man to decide how it is to be carried on, but I know your views, which I have set out, but we rather thought that during the period of transition—you disagree with us—that must be upon the Governor General. I have recorded your views. You will see that at the very beginning.

*Pandit M. M. Malaviya*: But you say "the size, composition and cost". Is not that a matter to be settled by the Legislature after taking expert opinion?

*Chairman*: I think if you read on you will see that it answers your point. The Report says:—

"While the size, composition, and cost of the Army are matters essentially for those on whom responsibility rests and their expert advisers, yet they are not questions on which there can be no voicing of a public opinion through constitutional channels."

I have got a note of your speech. When you were making your speech, I made a note of all your points and it was on your points that I drafted this paragraph. I put this in to satisfy you. Perhaps you would not mind just reading on. The sentence begins: "While the size, composition, and cost of the Army are matters

essentially for those on whom the responsibility rests and their expert advisers". Now, at the moment, we rather think that the responsibility rests upon the Governor General, but if you will read on you will see the sentence continues "yet they are not questions on which there can be no voicing of public opinion through constitutional channels". The Legislature would then be brought into the counsels of the administration. You will see the paragraph continues:—

"The Legislature would thus continue to be brought into the counsels of the administration in the discussion of such outstanding problems as the carrying out of the policy of Indianisation,"

and so forth. What we are there saying is that during the period of transition the Governor General is the responsible man, and he therefore must, with regard to the size, composition, and cost of the Army, have the ultimate voice, aided by his expert advisers. Of course, I know that your view is that at the very beginning that should all pass to the Legislature.

*Pandit M. M. Malaviya:* What I submit is this. The Governor General has the control of the Army under this proposal. I see that that is so. I do not quarrel with that—I know that is a view of a number of persons—but the size, composition, and cost of the Army are essentially matters for the Legislature to decide upon after taking such expert advice as it may think fit. If that is left to the Governor General, it would make the position even worse than it is to-day. To-day, it is not in the power of the Governor General to say what the size, composition, and cost of the Army should be. He has to decide that on the advice of His Majesty's Ministers here, the War Office, the Imperial Defence Committee, and so on. As the Report stands he would be able in the future to decide, say, that ten thousand more troops should be added.

*Chairman:* Is that quite right? The paragraph says, that these matters are essentially for those on whom responsibility rests.

*Pandit M. M. Malaviya:* That is exactly what I want to have made clear. Does such responsibility rest on the Governor General?

*Chairman:* I was using the title Governor General in contradistinction to the Legislature. I was simply saying that at present, whatever may happen in future, I am using Governor General as a phrase to distinguish from control by the Indian Legislature.

*Pandit M. M. Malaviya:* But would it not be better to make clear what is meant: whether the Governor General in future will decide these questions or whether they will be decided by any other agency? I submit that the question of the size and composition and cost of the Army are essentially matters for the Legislature.



*Chairman:* I am afraid we do not quite agree with that. I know you have said so. If you will look back to the third paragraph again, that is where I have recorded your view:—

“The view was strongly put forward by some members that no true responsibility for its own Government will be conferred on India unless the subject of Defence (involving, of course, the control of the Army in India, including that of the British troops) is immediately placed in the hands of an Indian Ministry responsible to an Indian Legislature.”

*Pandit M. M. Malaviya:* That is true; I quite see that. My point with regard to the paragraph now under consideration is that the question of the size and the composition and the cost of the Army should be within the competence of the Legislature acting upon expert advice; and then, once the troops have been formed, the control of the troops remains with the Governor General under your scheme.

*Chairman:* That is not our view. I know it is your view. I thought I had recorded that by giving you that very large paragraph. But what I will do, Pandit, is this. I want to see that everybody's views are properly expressed. I will add a note to this and say that the views of some people are that these should be matters for the Legislature. Will that satisfy you?

*Pandit M. M. Malaviya:* That is part of it, but what I want to make clear is whether the Governor General is to decide and who is meant by “those on whom the responsibility rests”. Why should not we say whether it is His Majesty's Government, the War Office or the Committee of Defence, or what it is? This is left very vague, My Lord.

*Chairman:* I purposely left it very vague in your interests. I think I will record at the end of this, and I will ask Mr. Carter to see that it is recorded, that some people think that the size, composition, and cost of the Army ought to be within the purview of the Indian Legislature. I thought it did come later, but it does not matter. That will cover your point. Then No. 7. I should just like to say this: I had such a little time to draw up this Report, that I asked Sir Tej Saprú, who, if he will forgive me saying so in public, made one of his very brilliant speeches on this matter, to send me a few notes, so that I could incorporate them in this Report. These are really derived from your notes, Sir Tej—7 and 8.

*Sir Tej Bahadur Saprú:* So far as I am concerned, I have no grievance; it presents my views perfectly correctly.

*Chairman:* Thank you. Now 8 and 9. Now will you turn over to page 5—No. 10? No. 11 I put in. My friend Mr. Joshi has gone. I have put that in in order to save his point. I think it does so. We have considered it very carefully. And 12, Pan-

dit, I will put that in at the end so as to save your point. Subject to that I sign it on your behalf. Pandit, I will submit the sentence to you so that you can get it quite right.

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(*Lord Sankey here vacated the Chair, which was taken by Lord Reading.*)

*Financial Safeguards (continued from page 1164.)*

*Mr. Gandhi:* My Lord, I followed your speech yesterday on this very important subject with the greatest attention and with all the respect that is undoubtedly your due, and in connection with that speech I read the paragraphs on Finance in the Federal Structure sub-Committee's Report of last year. I think they are paragraphs 18, 19, and 20, and I regret to have to record my opinion that I cannot endorse the restrictions that have been suggested in these paragraphs. My position, and, I think, the position of all of us, must be very difficult when we do not know exactly what are the financial burdens.

Let me explain. I would naturally have to consider the thing from one point of view if "Army" was a reserved subject, and another point of view if "Army" was a transferred subject. I have also very great difficulty in expressing my view by reason of the fact that the Congress is emphatically of opinion that the obligations to be taken over by the incoming Government should be subject to audit and impartial examination.

I have in my hands a Report prepared by four impartial men, two of them ex-Advocates-General of Bombay; I mean Mr. Bahadurji and Mr. Bhulabhai Desai. The third examiner or member of the Committee is Professor Shah, for a long time professor in the University of Bombay, a man having an all-India reputation and author of valuable works on Indian economics. The fourth member of the Committee is Mr. Kumarappa, who holds European degrees and whose opinions on finance command considerable acceptance and influence. These four gentlemen have submitted an elaborate Report in which they, as I hold, make out a conclusive case for an impartial enquiry, and they show that many of the obligations do not really belong to India.

In this connection I want very respectfully to say that the Congress has never suggested, as it has been viciously suggested against it, that one single farthing of national obligations should ever be repudiated by the Congress. What the Congress has, however, suggested is that some of the obligations which are supposed to belong to India ought not to be saddled upon India and should be taken over by Great Britain. You will find in these volumes a critical examination of all these obligations. I do not propose to weary this Committee with a recital of these things. Those who would care to study these two volumes may,

and I have no doubt will, study them with considerable profit, and they will perhaps discover that some of these obligations should never have been saddled upon India. That being the case, I feel that if one knew exactly where one was it would be possible to give a decisive opinion, but subject to that I venture to suggest that the restrictions, or the so-called safeguards, that have been suggested in paragraphs 18, 19 and 20 of this Report of the Federal Structure sub-Committee will, instead of helping India on her course, hinder her progress at every step.

You, My Lord, were pleased yesterday to say that the question before you was not one of want of confidence in Indian Ministers. On the contrary, you had every hope that the Indian Ministers would do as well as any other Ministers, but you were concerned with the credit of India outside the borders of India, that the investors who supplied capital to India and who brought their money to India at reasonable rates of interest, would not be satisfied if there were not safeguards of the type suggested here; and you went on further, if I remember rightly, to say that when there were any investments in India from here, or when there were any monies lent to India, it was not to be supposed that they were not also for the interest of India. If I remember rightly, Your Lordship used the words, "obviously it was in the interests of India". I was really waiting to find some illustrations, but no doubt you took it for granted that we would know those matters or those illustrations which you had in mind. I had really converse illustrations in mind while you were speaking, and I said to myself, I have with my own experience several illustrations where I could show that the interests of India were not in those particular illustrations identical with the interests of Great Britain, that the two were in conflict, and that therefore we could not possibly say that every time there were loans from Great Britain they were in the interests of India.

Take, for instance, so many wars. Take the wars of Afghanistan. As a young man I read with great avidity the history of wars in Afghanistan, written by the late Sir John Kay, and I have a vivid recollection left on my mind that most of these wars were certainly not in the interests of India; and not only that, but that the Governor General had bungled over these wars. The late Dadabhoi Naoroji taught us young men that the history of British finance in India was a history of muddle and bungling, where it was not also one of exploitation of India.

The Lord Chancellor uttered the warning, and you were pleased to enforce his warning, that finance at the present moment was a

the rupee was appreciated to 1s. 6d. from 1s. 4d. Now, there the measure was adopted in the face of almost unanimous opposition from Indians—Indians who were not in any way connected with the Congress. They were all independent, some of them great experts in finance, who knew exactly what they were saying. Now, there again one finds that the Indian interest was really subordinated to foreign interests. It does not require an expert to know that a depreciated rupee is always, or as a rule would be, in the interest of the cultivators. I was very much struck by an admission made by two financiers here, that if the rupee, instead of being linked to sterling, had been left to itself at least for the time being, it would have been of great advantage to the cultivators. They were going to the last extreme and thinking of some catastrophe that might befall India if the rupee left to itself went down to its intrinsic value, namely, 6d. or 7d. Personally, I have not even then been able to see that really the Indian cultivator would be in any shape or form damaged.

Now that being the case, I cannot possibly endorse safeguards that would interfere with the full discharge of his responsibility by the Indian Finance Minister, and that responsibility conceived predominantly in the interests of the ryots.

But I want to draw the attention of this Committee to one thing more. In spite of the caution uttered by the Lord Chancellor and you, My Lord, I feel somehow or other that if Indian finance was properly managed and managed entirely in the interests of India we should not be subject to fluctuations as seriously as we are to-day in the foreign market, the fluctuations in London. I want to give you my reason for it. When I first became acquainted with the writings of Sir Daniel Hamilton I approached him with considerable diffidence and hesitation. I knew nothing practically of Indian finance, I was absolutely new to the subject, but he with his zeal insisted upon my studying the papers that he continued to send me. As we all know, he has large interests in India, he has himself held offices of importance and is himself an able financier. He is to-day making experiments himself along the lines he has suggested, but this is the one striking thought that he has placed before all who would care to understand his mode of looking at Indian finance, and he says that India does not need to look to the gold standard or to the silver standard or to any metallic standard; India has metal all its own, and he says that that consists in her countless millions of labourers. It is true that the British Government has not declared itself insolvent in connection with Indian finance, that it has been up to now able to pay its way; but at what cost? It has been, in my humble opinion, at the cost of the cultivator, the money has been squeezed from the cultivator. Instead of thinking in terms of rupees, if the authorities had consulted and thought of finance in terms of these masses, they could have managed the affairs of India, in my humble opinion, infinitely better than they have hitherto done;

they would not then have been obliged to fall back upon the foreign market. Everybody recognises, British financiers have told us, that for nine years out of ten India has always a favourable balance. That is to say, whenever India has what may be called an eight anna or ten anna year—eight annas is really enough to give her a favourable balance—then India produces through bountiful nature, from Mother Earth, more than enough to pay all her obligations, and more than pay for all the imports that she may ever require. If it is true, and I hold that it is true, a country like India does not really need to fall back upon the foreign capitalist. She has been made to fall back upon the foreign capitalist because of the enormous drain that has taken place from India in order to pay what are called the home charges, in order to pay the terrific charges for India's defence. She is utterly unable to discharge these obligations, and yet they have been met by a revenue policy which has been condemned in no unmeasured terms by one of the officiating Commissioners, the late Romesh Chandra Dutt. I know he engaged in a controversy with the late Lord Curzon on this very topic, and we Indians came to the conclusion that the right was on the side of the late Romesh Chandra Dutt.

But I want to go a step further. It is known that these millions of cultivators remain idle for six months in the year. If the British Government saw to it that these men would not remain idle for six months in the year, imagine the wealth that they would produce. Why would we then need ever to fall back upon the foreign market? That is how the whole idea of finance appears before me, a layman, a man who continually thinks of these masses and wants to feel as they would feel. They would say "we have all the labour; we do not want, therefore, to fall back upon any foreign capital. So long as we labour the whole world would want the products of our labour". And it is true, the world to-day wants the products of our labour. We would be able to produce those things that the world would voluntarily and willingly take from us. That has been the condition of India for ages past.

Therefore, I really do not feel the fear that you, Mr. Lord, have expressed in connection with Indian finance. Having these views I do not really share the fear that Indian finance would be in jeopardy if we whispered something that need not be said now, or if a man like me said to-day that I would want complete control of Indian finance if India is to have responsibility at the Centre. In my opinion unless we have control over our own door-keepers and over our own purse absolutely unrestricted, we shall not be able to shoulder the responsibility, and it will not be a responsibility worth the name.

Holding this view I feel that the safeguards that I would suggest are of a totally different character; but I am not in a position at the present moment to suggest any safeguard at all—not until I know that the nation is to have complete responsibility, complete control over her Army, over the Civil Service, that the nation

will be at perfect liberty to take over so many of the civilians as the nation would want, so many of the soldiers as the nation would want, and on terms that would be suitable for a poor nation like India. Unless I know all these things, it is practically impossible for me to suggest the safeguards. As a matter of fact, when all these things are taken into consideration, probably there will be no necessity for any safeguards, unless one starts with want of confidence in India's ability to shoulder her burden and India's ability to carry on the administration of the country in a peaceful manner. The only danger under such circumstances that I can possibly conceive would be that the moment we take charge there would be utter chaos and disorder. Now, if that is the fear that seizes the British mind, then there is no meeting ground. We take responsibility, we ask for responsibility, we demand responsibility, because we have got that confidence that we would be able to carry on our affairs in a decent manner, and I would feel certainly in a much better manner than British administrators have done or could ever do—not because they are not able. I will grant that they are much abler than we are; I will grant that they have got an organising capacity which we have to learn at their feet. But we have one thing, that we know our country, we know our people, and we should therefore be able to run our Government cheaply. We would avoid all the quarrels, and we, not having any imperialistic ambition, would not go to war with the Afghans or any other nation, but we would cultivate friendly relations, and they would have nothing to fear from us.

That is the kind of idea that runs through my mind as I conceive Indian finance. You will see, therefore, that in my opinion Indian finance does not occupy such a large place in my conception, and not such a dangerous position as it evidently occupies in your mind, or the Lord Chancellor's mind, or in the minds of British Ministers with whom I had the privilege of discussing this question. Hence, and for the reasons that I have explained, I must respectfully say that it is not possible for me to subscribe to the safeguards that are suggested here, or to endorse the fears that agitate the British public, or the responsible public men in Great Britain.

One thing I would like to say: that for every obligation that the National Government undertakes there will be proper guarantees, such guarantees as a nation can possibly give, forthcoming, and assurances of a right type forthcoming. But, in my opinion, they will never be of the type or of the character described in these paragraphs. After all, if there are, and there would be, I have no doubt, certain obligations that we would have to take over and we would have to discharge towards Great Britain, supposing that we bungled and we did not do anything whatsoever, no assurances given on paper would be worth anything. Or supposing that India, when she comes into her own, unfortunately for her has a series of bad seasons, then again I do not know that any

safeguard that might possibly be conceived would be enough to squeeze money out of India. In these critical circumstances—unforeseen circumstances—visitations of nature, it is impossible for any national Government to give guarantees.

I do not wish to labour this point any further, I thought that I should occupy a few minutes of this Committee in unburdening myself of the views that a layman like myself holds upon Indian finance.

I can only close with the great sorrow that has overtaken me in connection with these things that I should find myself in conflict with so many administrators who have experience of Indian affairs and also of so many of my countrymen who are attending the Round Table Conference; but if I am to discharge my duty as a representative of the Congress, even at the risk of incurring displeasure, I must give expression to the views I hold in common with so many members of the Congress.

*Chairman:* I did not want to interrupt you, Mr. Gandhi, when you were speaking, but I do not think that you quite accurately represented what I had said. Obviously, I could not interrupt you, because it means going back and repeating what has been said, and, after all, it stands recorded. It may be a misinterpretation of some observations that were made, and of course there are many economic and financial matters which you have raised which have not been discussed at all. I only want to say in reference to them that you have introduced them for the purpose of your argument. All I want to say is that I do not want to reply to them to-day, for the reason that I have already given in the speeches that I have made with regard to finance, but I did not want it to be assumed that there is no answer to it.

*Mr. Gandhi:* Of course not.

*Mr. Iyengar:* My Lord, I propose, in the few observations that I desire to make, to confine myself to two or three points that you, My Lord, raised yesterday in the course of your demand that the Governor-General should possess affirmative powers in certain matters of finance, apart from such safeguards and other guarantees as were adumbrated before. You, My Lord, yesterday put before this Committee the case of the rejection of the Finance Bill in the Legislative Assembly in 1924 as the kind of thing that may happen in the future Legislative Assembly which would be set up under the federal scheme that we all have in contemplation, and you, therefore, wanted that provision should be made for restoring the Finance Bill with a view to enabling the Government to collect its taxes and carry on the government. If I may say so, with all due respect, My Lord, I think that in making that demand Your Lordship has failed to picture the position as it would be when the Federation came into existence as compared with the position that existed in 1924. The position of the Legislative Assembly of 1924 was that it consisted of a Legislature in which the Swarajists had

come to the position of making a national demand and of following a policy of obstruction with a view to enforcing the national demand. The position of the Government at that time was that it was an absolutely irresponsible Government which had absolutely no claim on the support of the representatives of the people in the Legislature who were definitely hostile to them, and to whom neither the Finance Member nor the Government representatives had any responsibility or obligation, constitutionally speaking. The Assembly that would be brought into existence under the Federation is one in which the Finance Member will be a Member of the Cabinet, responsible to the Legislature and able to command a working majority of the votes of the Legislature to carry through his proposals. We have, therefore, to assume very rightly that when he presents his Budget he presents it with the assurance of a certain and safe majority behind those financial proposals. When that state of things exists I think, *ex hypothesi*, the conditions which you, My Lord, envisaged cannot arise. Assuming, however, that between the time when the Finance Minister, confident of his majority in the House, brought forward his Budget, and the time of its actual vote, there was such a cataclysm as to make him lose that majority in the House, then I say that is a condition of things which happens in every other democratically governed country, in every other parliamentary system, and they have, of course, devised measures for dealing with such situations. There is absolutely no reason, therefore, why the same procedure and the same method cannot be adopted in regard to the Federal Legislature that will be brought into being if such an extraordinary contingency does arise. As we all know there are various ways in which this is done, and in England the parliamentary machinery has been perfected so as to secure that due regard to the absolute and unfettered rights of the British Legislature to accept or reject any financial proposals of the Government. Measures have been so devised, and conventions have also been established that would enable the Government to carry on while the Finance Bill is on the anvil. There have been the usual Consolidated Fund charges voted, there have been votes of credit, and there are various other devices by which the Government is able to find the funds to carry on the administration until the Finance Bill is put through later in the session. In the meantime if there is any constitutional crisis in the Budget then there is the normal constitutional machinery whereby, by means of the replacement of the Cabinet or a dissolution or any of the various constitutional devices in operation, they can be made to set up another Government which will take the responsibility of producing a proper financial measure on the basis of which the House of Commons with the majority it then obtains can vote the taxes and collect them.

Now if we examine whether such a position can be made workable in India, I say that even now the Indian Legislative machinery has to some extent been assimilated to the procedure which has been established in the House, thanks to the efforts of those who laid



down the procedure in 1920 and 1921 under your guidance, My Lord. There is, as Your Lordship will recollect, the Provision and Collection of Taxes Act, by means of which it is possible for the Finance Member to continue to levy taxation until whatever constitutional difficulties or crises may arise in the House are got over. You may also have the provision which my friend, Sir Tej Bahadur Sapru, suggested, that until the new Budget is passed, the provisions of the old Budget shall be enforced. There may also be a third method, also employed in this country in so far as the collection of taxes is concerned.

There are, as Your Lordship will recollect, permanent Acts of Parliament by means of which taxes are collected permanently, and also annual Acts of Parliament by which taxes are collected. In so far as the control of the Legislature over finance may be complete, this division has been made so as not to put the financial mechanism of tax collection wholly into the melting pot, and such a device can also be adopted. In fact I suggest that when we start the new constitution, the permanent taxes which would enable the Government to obtain its absolutely minimum quantity of supplies can always be put on the Statute book. That would enable these people to find the money.

My Lord, there are various devices that can be adopted, I do not think that where a financial measure is rejected there is no other way except that of certification and the use of a method which has been very rightly condemned by Sir Tej Sapru as the negation of responsible Government and as the means of arousing hostility in the Legislative Council. Therefore, with great deference, My Lord, I submit that the idea of certification should be absolutely abandoned so far as the Indian financial provisions are concerned.

Then, My Lord, there was another idea that was put in which I think was at the bottom of the proposal that certification in one form or another may be inevitable. That is this. You, My Lord, pointed out that if the Army is going to be a reserved subject, or if the Army with the provision for the payment of the Army charges ought to be on a contractual or any other basis and they are put on the Consolidated Fund, as is done in all modern Governments, that does not necessarily end the difficulties of the Governor-General if he is made responsible for the administration of the Army. You pointed out that it is one thing to say that he can draw on the Consolidated Fund, and it is another thing to say that the money is in the till; and therefore the Governor-General must make sure that the money is in the till. Now, My Lord, I do not think, in order to make sure that the money should be in the till, the Finance Member should surrender his powers of proposing measures of taxation in the Legislature or that the Viceroy should obtain powers by means of an ordinance or of any certification measure, to raise new taxes. If we proceed on the assumption that the Finance Member, the moment that there is a provision in the constitution that the Army charges must be met and must be part of the Con-

solidated Fund, and we all assume that the Finance Member, as Mahatma Gandhi very rightly pointed out, is a sensible and an honourable man who would always make sure that the payment of these Consolidated Fund charges which are a first charge on all revenue are always available, then the money that is necessary would always be available there. If that money is not available, if circumstances intervene which deplete the Treasury, then I say that is a phenomenon which will not be peculiar to my country. It has occurred in many other countries; it has occurred in this great country. The country has been faced with many such difficult situations and we have had any amount of controversy in India with regard to the manner in which the Government has been using many of its separate funds for the purpose of paying unemployment dole, and the like. All I am saying, Sir, is that so far as the Finance Member's willingness to place the funds, and his ability to do so, is concerned, there can be no question. So that if they are left in question, then the contingency that arises is a contingency that arises in all modern properly governed countries and must be dealt with in exactly the same manner as it has been dealt with elsewhere. If the assumption is that the Indian Finance Member will from sheer "cussedness" so manipulate the finances in the till as to leave no money for the Army or any of the Consolidated Fund charges, and thereby compel the Governor-General to resort to measures of taxation, I say, Sir, that that is an assumption wholly unwarranted and absolutely unjustified.

In the next place, if all these payments ought to be made from the Consolidated Fund, if interest charges, if Military charges, and if payment of all the important Civil Services ought to be made a first charge on the Consolidated Fund, then what is the purpose which the Finance Member can have in cutting off his nose to spite his face? In that case the Finance Member would not be able to pay the salaries of the staff; the Finance Member would not be able to pay the instalments of interest that might be due. Thereby he would diminish the credit, and all for the purpose of reducing the money that may be available for the Viceroy to draw upon for the purpose of making military payments, I say, Sir, that that is an assumption which is wholly unwarranted. If the power to levy the money is ensured to the Viceroy, and we accept the proposition that these Army charges are to be made part of the Consolidated Fund, if that class is accepted and honoured, I think it is equally right to assume that the Finance Minister will honour the other obligation of finding the money for which there is a legal authority in the Governor-General to draw. Indeed, My Lord, the financial arrangement and the stability of the financial system is the joint concern of both in this matter, and it is indeed very much more ours than yours. We are very much more interested in the maintenance of the stability of the financial administration of our country than those whose only interest in it is the drawing of their interest or the payment of their money when it falls due. I do not say for a moment, Sir, that those who have managed our finance have

not kept the interests of our country before them to the best of their lights, but what I am failing to understand is, why it should be suspected that when we are put in their place we would begin to play "ducks and drakes" with the finance in a manner which you do not suspect your own people of doing.

The other matter, My Lord, upon which I desire to say a few words is in regard to the loans. I am fully bearing in mind the observations made by you in regard to this matter, and all that I want to say at this stage is that apart from the proposals we have made in the Federal Finance sub-Committee as to the constitution of a Loans Board and the manner in which future loans should be served, we have to recollect that so far as the present financial position of India is concerned in regard to loans, she is in an exceptionally strong position, and in so far as our assets are concerned, in so far as what is called the productive part of our sterling and rupee debt is concerned, it is covered by assets which are considered first-class, and if we made the arrangements which were referred to yesterday in regard to the constitution of a properly framed Railway Board it would be clear that in so far as our requirements in respect of railway capital expenditure are concerned, or any other form of productive activity, there can be no better method of securing the confidence of the public than what the Indian Government have been providing. The Indian Government have been providing by a very liberal and, as we all considered at the time, by an overliberal provision of sinking funds, both to the general revenues and under the railway budget, for the service of these debts; and with these assets before them and with the Railway Board properly constituted, there can be no difficulty whatever in obtaining our loans in the market. With the present position of the market it is a different thing, but talking of a normal condition of things I do not see how India can at any time be expected to be in such a position that she would need the guarantee of people in this country with a view to making sure that her credit is safe. Besides, My Lord, except for productive purposes, the need for going to the market for unproductive debt has not been apparent so far as India is concerned for a number of years. There has been, no doubt, a large amount of floating debt that has been incurred from time to time to meet Treasury requirements, and it has been covered subsequently. There are, no doubt, maturing obligations which have soon to be met. I agree that in all these matters arrangements will have to be made so that India will not be put in a position of exceptional difficulty in meeting her financial obligations as they mature in the coming four or five years. In this matter we think what is required is an arrangement which will enable India to put her first-class financial position and securities before London in a proper way for obtaining credit, and not have the control from Whitehall, but have control not only of loan operations, but of the Budget, of the currency, of foreign remittances, and every matter of expenditure with which the future Federal Government will have to deal.

I therefore feel that so far as India's loans are concerned we do not think that the continuance of control from Whitehall is absolutely essential. We have been told that the British investor is nervous. We have been told, for instance, that the British investor has always relied upon the Secretary of State. I say the Secretary of State in Council is not a particular person. He is a changing personality. He is a corporation in the view of the law. In fact, unlike any other Government representative, the Secretary of State in Council can sue and be sued, and, therefore, so far as his position is concerned he is to be judged not by the fact that he is at the India Office in Whitehall and is a member of the Cabinet, but because he is put in charge of the affairs of a country whose Budgets are open before the public, whose assets are equally before the public, and whose balance sheet they have the means of examining. In so far as we are able and prepared and ready to put the same facilities before the public, I do not see why the mere fact that the Secretary of State exists is any more reason why the investing public should say we will trust him and no other. I think if any such proposition is seriously advanced it is neither just to those people who are administering Indian finance nor just to the people of India. If after all these years you are going to say the Britisher is the man who can get money for you and you can go to nobody else, I say it is no credit to your Government to say that that must continue.

For these reasons I think there is absolutely no difficulty whatever in the way of securing our financial stability, in the way of our securing a properly balanced Budget, and in the way of our securing essential supplies by investing an Indian Minister responsible to the Legislature with the power to manage our finances.

*Chairman :* Thank you.

*Mr. Benthall :* May I ask Mr. Iyengar where he would get the money if the fact is true that he would not be able to get it in the London market?

*Mr. Iyengar :* As I say I have not been told that you cannot get money in the London Money Market unless it is endorsed by A, B, or C. Until I know it is so, and why it is so, I shall never accept that statement. On the other hand I have excellent securities to advance.

*Mr. Benthall :* May I make one observation? It is in connection with the Statutory Finance Council which is proposed by Sir Tej Bahadur Sapru. My community in India is satisfied with the existing state of things, but my Delegation and a good deal of commercial opinion in India believes that very considerable possibilities are opened up by the proposal of Sir Tej Bahadur Sapru regarding the Statutory Finance Council which he dealt with in his speech. We held that view in India, and after coming to this side a private exchange of views of a most sincere and earnest nature has shown that this avenue does hold out undoubted possibilities of reaching a very large measure of agreement in happier financial

times, perhaps not now. In our opinion the Council should have wider functions than that indicated by Sir Tej, and in various details there is room for argument.

But I would ask that when the major problem which is agitating our minds just now is settled, this proposal should have further investigation by His Majesty's Government, and I would like to put forward the request that this proposal should be referred to in the Lord Chancellor's Report as a subject worthy of further investigation.

*Chairman* : Thank you. Sir Akbar Hydari, do you wish to make any observations?

*Sir Akbar Hydari* : I wish to say that I feel that the proposal as to a Statutory Finance Council has very great possibilities. I should like to make it clear that, while the Reserve Bank when introduced might be the authority to manage the currency according to the policy imposed by the Legislature, still the functions of this Financial Council will be much wider according to the ideas which I believe we entertain. I am confident that if such a Council consisted of men who considered all these propositions that were brought before them as purely business propositions, it will ensure a measure of confidence which will be sufficient to satisfy the investing public. I feel as strongly as you, Sir, have expressed it and as Mr. Pethick-Lawrence has said, that it is necessary that we should inspire every confidence in the investing public. It should be through the institutions that we create now, and through our future conduct that we should gradually allow the safeguards which are at present being implemented only to create that confidence, to become gradually atrophied by not being used. I think, Sir, that we ought to consider all these propositions with regard to safeguards and so forth as not being any reflection on our self-respect, but as propositions which have been created in view of our long connection with England and also in our own interests, because that connection will continue for a very long time and I hope for ever.

I have had some experience of financial transactions in this country, and I must say that the assistance I have received here is such that I should be very sorry if that co-operation were at any time jeopardised. Therefore, I hope that my British-Indian friends and those on this side of the table will both try to approach this question purely as a question of finance and business, trying to bring about such an arrangement as will, on the one hand, stabilise the credit of India within the whole field in which that credit will have to be exercised and, on the other hand, will satisfy everybody that whatever is done is really done in the true interests of India as a constituent element of the British Empire.

*Chairman* : Thank you.

*Sir Purshotamdas Thakurdas* : May I say one word about the Statutory Financial Council to which Mr. Benthall referred?

*Chairman* : Yes.

*Sir Purshotamdas Thakurdas* : The question was discussed between a few, but nothing definite was arrived at. As Mr. Benthall has suggested that this should go into the Report, I want it to be on record that as far as I am concerned I do not commit myself to it. There are many loose ends which require to be tied very carefully and clearly before I can give my consent to a Statutory Financial Council of the nature indicated by Mr. Benthall. At the same time, however, I concede that there may be in it germs of a satisfactory agreement as far as India is concerned when the details are considered. But until that is considered I do not commit myself to any part of the Statutory Council to which Mr. Benthall referred. As a matter of fact when that was discussed between a few friends here, it was a Financial Council or a Council of Financial Experts in an advisory capacity and nothing more.

*Mr. Iyengar* : And that is the idea of Mr. Benthall even now.

*Sir Purshotamdas Thakurdas* : The word " Statutory " I heard for the first time to-day at this table, and I myself fail to see the utility and necessity of a Statutory body like that, even after the Reserve Bank has come into being, and here I refer to what Sir Akbar Hydari said just now. Therefore, I feel that the thing is now appearing to expand, and I am anxious to have it on record that I keep myself perfectly open regarding the details which require to be considered.

*Sir Tej Bahadur Sapru* : Will Your Lordship permit me to say just one word?

*Chairman* : Yes, Sir Tej.

*Sir Tej Bahadur Sapru* : The idea proceeded from me yesterday and I wish to explain the Statutory Advisory Council that I had in mind.

*Sir Purshotamdas Thakurdas* : Is it Advisory or Statutory, please?

*Sir Tej Bahadur Sapru* : It must be under the Statute; you cannot have a Council like that by mere administrative order. I have no fear of the word " Statutory." My idea was this, that the Statute itself should provide for the establishment of an Advisory Council during the period of transition in regard to matters of exchange and currency. If experience shows it to be of utility, we might perpetuate it.

*Chairman* : I follow that.

*Sir Purshotamdas Thakurdas* : It would mean that the Statute would not lay it down as a permanent body.

*Sir Tej Bahadur Sapru* : During the period of transition. I said so in my speech yesterday.

*Sir Purshotamdas Thakurdas* : Does it mean during the period of transition until the Reserve Bank is established?

*Sir Tej Bahadur Sapru* : Yes; that is what I said in my speech yesterday.

*Chairman* : I think you have made the position quite clear. Yours is a temporary thing for the purpose of seeing how it will work, and, if it works satisfactorily, then you think it should be perpetuated—at any rate continued.

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(*The Committee adjourned at 4-15 p.m.*)

PROCEEDINGS OF THE FIFTY-SECOND MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THURSDAY, 26TH NOVEMBER, 1931, AT 11.0 A.M.

*Discussion on Order of Constitutional Development—concluded—*  
(continued from page 1190).

*Chairman* : Your Highness and Gentlemen, yesterday Mr. Jinah was good enough to ask me to give a ruling on certain matters. The position was this. Mr. Lees-Smith and Mr. Wedgwood Benn raised a point of very great importance, namely, with regard to the future work with reference to getting a Federation for India, and I allowed a discussion on it which I think was a very valuable discussion; but at the same time I am afraid it was a very irregular discussion, and for this reason. I do not think it was within our terms of reference. The terms of reference, if you will be good enough to look at them, are first of all to be found on page 7 of the Interim Report, where you will see that it says “The sub-Committee”—that is, ourselves—“was appointed to consider and report upon the following four of the Heads of discussion which were framed for the Federal Relations Committee,” and then these are given:—

“No. 1.—The component elements of the Federation.

No. 2.—The type of Federal Legislature and the number of Chambers of which it should consist.

No. 3.—The powers of the Federal Legislature.

No. 6.—The constitution, character, powers, and responsibilities of the Federal Executive.”

On page 15 you will observe that further Heads were referred to the sub-Committee, that is to say:—

“ (4) The number of members composing each Chamber of the Federal Legislature, and their distribution among the federating units;

(5) The method whereby representatives from British India and from the Indian States are to be chosen; and

(6) The constitution, character, powers and responsibilities of the Federal Executive.”

I am afraid none of those terms of reference quite cover the point raised by Mr. Lees-Smith, but his advocacy was so good that

I felt bound to give way to it, and I do not regret it for a moment, because I think we had a valuable discussion; but at the same time I am going to report to you what I have done, and then I am going to give my ruling.

What I have done is this. I reported to a number of members of the Cabinet last night exactly what has taken place, and I told them the names of all those who have spoken and their views. What I am going to do is this. A special Cabinet is going to be summoned for to-morrow morning to consider it and I am going to ask those people who did not speak yesterday to speak now. That is to say, I am going to ask almost immediately Mr. Jinnah, Sir Muhammad Shafi, Mr. Gavin Jones, Mr. Iyengar, and Pandit Malaviya, and I should like to have your opinions.

*Sardar Ujjal Singh* : I did not speak yesterday.

*Chairman* : Yes, and Mr. Ujjal Singh. But with regard to making a Report, I do not propose to make a Report because I do not think it is within the terms of reference, and I will not do it. I call on Mr. Jinnah.

*Mr. Jinnah* : My Lord Chancellor, I want to say what our position is with regard to this question which has been discussed by so many members. As I understand, the question is that we should impress upon the Government by expressing our opinions here that the responsibility at the Centre should be brought into being simultaneously with the Provincial autonomy. That being the question, I want our position at least to be made clear. I want first of all to make it quite clear to this Committee what the position of the Muhammadans is. We have all along, from the very commencement of this Conference, made it clear that so far as the Muhammadans are concerned we are not going to stand in the way of the constitutional progress of India. Last year I said this—if you will forgive me for quoting my speech.

*Chairman* : By all means.

*Mr. Jinnah* : Because it would be better to put it in the same language than in different language. I said this:—

“ We have now come to a stage, however, when I think I shall be failing in my duty if I do not tell this sub-Committee what the Mussulmans' position is. Sir, I maintain that the Hindu-Mussulman settlement is a condition precedent, nay, it is a *sine qua non* before any constitution can be completed for the Government of India; and I maintain that unless you provide safeguards for the Mussulmans that will give them a complete sense of security and a feeling of confidence in the future constitution of the Government of India, and unless you secure their co-operation and willing consent, no constitution that you frame for India will work for 24 hours.”

That is the position to-day, and we have tried our utmost. I do not wish to enter into any controversy.



*Chairman* : I quite agree with you, you have tried your utmost.

*Mr. Jinnah* : I have to say most painfully, under the greatest regret, that we have so far failed to bring about a settlement of this minorities question.

Now, Lord Chancellor, when we reached that stage we realised that if we discussed these very important questions connected with responsibility at the Centre there would be no reality about these discussions. It is the same feeling that my friend Sir Tej Bahadur expressed yesterday; he realised for another reason that there is no reality about these discussions, and he gave you the warning in the friendliest, the firmest and the plainest language regarding what his position was. Similarly, when we decided to reserve our opinion on these vital questions, we intended to convey the friendliest, the firmest, and the plainest warning that you cannot complete your constitution making unless the Minorities question was settled.

I know perfectly well it is said: "Well, never mind that; let us go on; surely we can discuss the other questions." But I tell my friends here and I tell the British delegates that there is a real and a serious and a grave apprehension in the minds of the Muslim delegates here and in India, that if you go on participating in the structure right up to the roof, and when everything is completed, this constant assurance that, of course, the communal question must be settled, that it is essential, may recede into the background to such an extent that we might have a finding, a decision against us *ex parte* almost; that is the reason why we have adopted the course that we have been compelled to adopt.

I have said this and I say this again. I am saying this on behalf of the Muhammadans, and you must remember what the feeling is in India to-day. You must have had some inkling from the newspaper reports that have been wired here from day to day; but you do not know yet the real feeling that is behind it. Let me tell you that we are in a grave difficulty here. Nevertheless, we do not wish to be misunderstood in any way. Sir, Muhammadans do not wish to put any difficulty in the way of the constitutional advance of India. Muhammadans also feel—and I have no difficulty in stating to you frankly—that mere Provincial autonomy being brought into being will not command the support of the better mind of India. But I want you also to remember that no constitution that you will frame will be acceptable to the Muhammadans unless their demands are complied with. My Lord, it is easy to break the Constitution; it is far more difficult to work the Constitution. The work of destruction is easy; the work of construction is more difficult. I appeal to my friends here: Can they complete any constitution for the Government of India without the minorities question being settled? Can you complete it? You may discuss it if you like. Therefore, I say, that the basic difference which goes to the root of it is the question of the minorities.

I do not wish to add anything more except to say this. Mr. Lees-Smith, who raised this question, said to us that it will take

three years. I am not sure. Estimates are made by optimists, by our friends and sympathisers, that this can be achieved in three years. As I say, I am not sure. It seems to me that some of our friends here are putting forward a proposition which might be got hold of, but there is a danger, and I warn my friends of that danger. You say, no Provincial autonomy to start with. You say, Provincial autonomy and responsibility at the Centre must take place simultaneously. I am with you in that proposition.

I have no hesitation in saying that I think the better mind of India will not accept anything less, but do not be dragged into a maze. Sir Tej Bahadur Sapru himself said he thought it would take less time than three years, but he was open to conviction, and if it were made plain to him that that period were necessary he would not mind it. I cannot imagine how you are going to complete the federal structure of the Government of India on the basis of an all-India Federation within any period that you can reasonably expect India to wait for, and I say, My Lord—I say it with very great respect to all those who have irrevocably committed themselves to the scheme of an all-India Federation—turn your vision nearer to British India. It is not too late. I think you will make quicker progress than you expect to by hugging and hanging on to this illusion and mirage of an all-India Federation.

*Lord Reading* : May I be allowed to ask one question of Mr. Jinnah? I have followed with the greatest interest what he has said, but I am in a difficulty. The question I want to put, if he can answer me—I cannot press it, of course, if it is not convenient for him to answer it—is: In the absence of a communal settlement by agreement which is the present position, what is the alternative, that Mr. Jinnah would suggest? As I understand it he says that you cannot arrive at any conclusion—I do not want to argue about it—at any rate from the Mussulman point of view until you have a settlement. What is not clear to me is: What is it that Mr. Jinnah suggests from the Mussulman point of view is to be done in the absence of a communal agreement as to electorates and so forth?

*Mr. Jinnah* : Well, Lord Reading, I am perfectly willing to answer that question on my own individual responsibility. The answer really is this, Lord Reading, that you cannot possibly enact any constitution without a Hindu-Muslim settlement. But when you are talking of a settlement or an agreement I understand that the agreement must be brought about between the various interests themselves on almost all vital questions before you can set up the constitution for an all-India Federation.

It is not only the question of a communal settlement. That is exactly the reason, Lord Reading, why I said that that is a process which cannot be accomplished within a measurable distance of time, in my judgment, and I say that the responsibility is the responsibility of the British Government to-day in India. Lord Reading, you are not going to abandon your responsibility in India; you are not prepared to do that. You are prepared, as far as your Govern-

ment is concerned, to give a substantial measure of advance in the shape of a limited kind of responsible government. If that is your policy, then, after having had months and months last year and months and months this year to discharge it, it is your duty to India, not in deference to the opinion of one section or of one party here or of one party there, to decide what you propose to do in India. It is your duty; it is your responsibility.

Let me tell you that whatever differences there may be here one thing is certain: you cannot carry on your Government as you are carrying on at present. Take the decision, and the co-operation and support of that decision of yours will depend on the nature and the character of your decision, and on the justice of it. If there is a better mind in India, and I say there is, and if your decision is one which is reasonable, which is just, and which will appeal to the better mind of India, it will receive the support and co-operation of India, and, believe me, you will then lead India to the path of prosperity, of happiness and of peace.

*Chairman* : We will now hear Sir Muhammad Shafi.

*Sir Muhammad Shafi* : Lord Chancellor, when last evening I heard of the important point raised by Mr. Lees-Smith in the meeting of this Committee yesterday, I decided to attend the meeting this morning, in spite of the fact that I am leaving for India by the mid-day train, in order to offer my respectful advice to His Majesty's Government.

My friend Mr. Jinnah, in his statement made on behalf of the Muslim delegation, has referred to what we hold to be the *sine qua non* of any constitutional advance in India, namely the settlement—if possible by mutual agreement; otherwise by His Majesty's Government—of the communal problem with which we are confronted at this moment.

Lord Chancellor, I go back to India with my heart full of grief that these communal questions have not been settled as a result of mutual agreement between the representatives of the various communities themselves. So far as the Muslim delegation is concerned, I do not wish to put the blame of this failure to arrive at an inter-communal settlement upon any party whatever. But this much I do say, that the Muslim Delegation have tried their level best. They tried their best last year, and they have again tried their best this year, to bring about a satisfactory settlement of the inter-communal problems. We have failed, and the heart of every sincere well-wisher of India's constitutional progress must be full of sorrow and full of shame, because of that failure. But does not His Majesty's Government have the responsibility cast upon its shoulders because of that failure to come to a decision with regard to the various issues involved in this controversy? On whom does the constitutional responsibility ultimately rely? Does it not lie on His Majesty's Government and on the British Parliament? I say it does, and the British Government will have to give a decision, for unless and until you give a decision, how can you frame your constitution for India, the constitution which you contemplate?

My Lord Chancellor, assuming that the constitution which you intend to frame does include in it—and it must include, otherwise it will not work even for twenty-four hours, as my friend, Mr. Jinnah, has said—Muslim safeguards, as well as safeguards for the other minorities, then my advice to His Majesty's Government is "Go ahead." Go ahead, not only with your Provincial autonomy, but also with the responsibility at the Centre. The better mind of India at this moment is prepared to accept the safeguards with regard to defence, with regard to political and foreign policy, and with regard to finance, which we decided upon at the first stage of this Conference, and as I said in my speech at the Plenary Session, political aspirations, if not satisfied at the psychological moment, have a way of growing. What may satisfy the better mind of India to-day may not satisfy even that mind three years hence. Therefore, my advice to His Majesty's Government is, to come to a just decision, a decision which will give the eighty millions of His Majesty's Muslim subjects their rightful place in the India of the future, and a decision which will give the other minorities also a rightful place in the India of the future. Go ahead, not only in the Provinces, but also at the Centre. That is the advice of one who has all his life believed that the future of India lies within the British Commonwealth of Nations, and who believes that a happy and contented India will be a source of immense strength to that Commonwealth.

*Chairman* : Sir Muhammad Shafi, let me thank you not only on behalf of the Committee, but let me thank you personally for coming here at the very last moment to give us the benefit of your advice. I shall take care that almost every word you have said is conveyed to the proper quarters. May I, in conclusion, wish you a very happy and prosperous voyage?

*Sir Muhammad Shafi* : Thank you, My Lord Chancellor.

*Chairman* : Now, Mr. Gavin Jones.

*Mr. Gavin Jones* : Lord Chancellor, though we appreciate the opportunity to get down to realities and to state what we think ought not to be done, I personally must say that I think this debate is a mischievous one. My reasons for saying this are that, although Mr. Lees-Smith has no doubt brought forward this debate with all earnestness, I fear that it will have a very bad effect on the outside public. In the first place, the diehard element in England will say that the Labour Delegates are endeavouring to put difficulties in the way of the Government.

*Mr. Joshi* : That is their job.

*Mr. Gavin Jones* : In the second place, I must take exception to the speeches that were made yesterday in the threatening tone in which they were made, threatening non-co-operation and worse. That will have a very deplorable influence in India. Having said that, Sir, I want to say what is the view of our Delegation. We ourselves, of course, wish that Provincial autonomy should be introduced prior to Federal responsibility, for it is quite inevitable that

the constituent States should be created prior to Federation. We, however, stand by the principles which were agreed to at the last Conference, and do not think that a measure which only deals with Provincial autonomy is adequate. It is quite evident that our fellow delegates will not accept only Provincial autonomy, and, Sir, you cannot force self-government on those who have got to work the constitution. The result of forcing merely Provincial autonomy on them will be that they will wreck the constitution.

Therefore, Sir, we think, although it may mean delay, that a Standing Committee should be established to continue the constructive work which has been done at those Conferences in creating a framework for the whole scheme, with a definite programme, for the necessary transition stage in the progress towards Federation. And I want to reiterate here, Sir, that there must be no transfer of responsibility without Federation. Now, Lord Chancellor, I wish to state my personal view. I have been conscious throughout this Federal Committee of the unreality of the discussions. The reason for this is not far to seek. The fundamental issues have not been dealt with. The real fact of the matter, Sir, is that we were not ready—anywhere near ready—in India for this Conference. I had hoped that after the last Conference we should have established boundary commissions, franchise commissions, and financial relations commissions to be followed up by provincial conferences to create our constituent States. Instead of that, Sir, the Government, and I must say the politicians of India, were obsessed with the idea that the Congress must be represented at another Conference here and that Mr. Gandhi should come to London. A year has passed in the endeavour, as I believe, to reconcile the irreconcilable. As far as I can see, Sir, Mr. Gandhi has repeated the Congress demand and no other constructive proposal has come from the Congress.

Was it necessary for Mr. Gandhi to come all this way to do only that? At the last Conference, Sir, in Plenary Session, I asked that the road should be made clear for Indians themselves to attain responsible Government, for responsible Government is not something that can be granted. It has got to be achieved. I also added that in the meanwhile India must be governed, for it is the first duty of a Government to govern. Now, Sir, in my humble opinion, India has not been governed. Lawlessness has been condoned, and lawbreakers conciliated. The impression has got abroad in India that the Government is about to quit. The position, therefore, now is that we have got to restore peace and tranquillity, for there can be no advance in India either Provincial or Central without peaceful conditions and a balanced Budget.

The point I wish to make is that the Administration is in great difficulty. Official after official has said to me that something definite must be decided—good, bad or indifferent. They cannot carry on in uncertainty. My main point is this, Sir. I want to plead with the British Government to be definite and to state what their intentions are with regard to India. I would like them to adhere to the principles that were agreed to at the last Conference.

I would like them to state very clearly what they consider are the necessary reservations. I would like them to state what safeguards must be imposed; I would like them to state what they propose to do in the transition stage in regard to Law and Order in the Provinces, and having stated this clearly to make the road clear for the progress of constructive work and for filling in the details.

Now, Sir, before I end I must refer to the communal question, because that is fundamental. It is essential if any progress is to be made that the communal question should be settled.

Now, Sir, I should like to make an appeal to my Hindu friends. The first step towards a settlement is an acceptance of the principle of separate electorates. We know what the objections are; everybody knows what the objections are. But, Sir, I should like to point out that Lord Morley, Mr. Montagu, and Sir John Simon have one and all tried to solve this problem, and have all come back to the conclusion that separate electorates are essential. If only our Hindu friends will agree to that principle, I think the gulf is bridgable. Here again I would give my personal opinion, and it is that when you get down to the Boundaries Commission I think there are possibilities there of solving the communal problem in regard to some of the Provinces.

Now, Sir, Mr. Jinnah has said that a United States of Greater India is a mirage. I do not agree with him; I think that it is the only solution of our problem. As long ago as 1926 I held this ideal, and in a speech I made at the European Association, in which I asked the members to consider the political problem, I envisaged India as a United States of India under the Crown. It is a great ideal, and all great ideals are difficult of attainment; but, because it is difficult, therefore we must strive on and on. Let us persevere, for, as the old saying goes, Rome was not built in a day. Therefore, let us build slowly but surely.

*Sardar Ujjal Singh* : Having been unwell for the last two days, I have not had the pleasure and privilege of listening to the speeches yesterday. I want to state my position and that of my colleague at the Round Table Conference on the question under discussion.

Sir, we are of opinion that responsibility at the Centre should be introduced simultaneously with Provincial autonomy. The work of the Round Table Conference will prove a failure, and all the time and money spent on it as entirely wasted, if we go back with only some advance in the Provinces and mere assurances with regard to Central responsibility.

I do not agree with Mr. Jinnah that all-India Federation is a mirage and a delusion. I believe the patriotic spirit of the Princes, a spirit which they have shown all along, will make all-India Federation an accomplished fact. The Princes have taken time to adjust their differences with regard to their grouping, but they have expressed their readiness for the acceptance of a committee of impartial people if they are not able to settle their differences by that time. I recognise that time is needed to settle the details. By all

means take the necessary time; India will not grudge it. But, believe me, no party or section of India will be satisfied with a mere dole of Provincial autonomy. India at this moment needs broad-mindedness, a higher statesmanship, and a more generous treatment than mere tinkering with reforms.

Sir, I have made these remarks with this reservation, that any constitution, whether Provincial autonomy or Central responsibility, will not be acceptable to the Sikhs unless their interests are fully safeguarded. In this connection I endorse the remarks of Sir Muhammad Shafi, that it is the responsibility of the Government to give a decision with regard to the communal question, a decision which I hope will be just, impartial, and equitable.

*Mr. Iyengar* : In associating myself entirely with all that fell from this side of the Committee by way of protest against what we had reason to believe were the intentions of the Government, I desire to say just a few words regarding my own position. I was one of those who were invited, to use the words of the Prime Minister's speech, to co-operate on the general lines of the declaration which the Prime Minister made on the 19th January last. It was after the Irwin-Gandhi pact that we were invited, and we are here to participate in the deliberations on the basis of His Majesty's Government's declaration and on the basis of that pact. I therefore, My Lord, have every right to take my stand on that declaration as the basic position from which it would not be right and it would not be proper for His Majesty's Government to go back. That declaration is on the footing of a Federal Central responsibility and safeguards. To consider now that the deliberations of this Conference have any relation to mere Provincial autonomy is to put the entire Conference out of the field of any reality of constitutional work in the future. My Lord, what I am troubled with is, that the Right Honourable the Secretary of State, in describing what he did yesterday as something like a melodramatic tragedy, said, if I recollect rightly, that there were no irrevocable decisions on the part of His Majesty's Government. I trust that His Majesty's Government have not come to any revocable decisions.

*Sir Samuel Hoare* : I can tell Mr. Iyengar at once that we are quite genuinely waiting to hear opinions all round, and that is the reason of the consultations we have been holding this week. We are still holding consultations, and quite obviously we shall come to no decision until we have finished our consultations.

*Mr. Iyengar* : I know about that. The words "irrevocable decision" suggest that there were revocable decisions. The reason why we felt that there was ground for our recording the protest that we did, is to be found in the speech which Sir Samuel Hoare made on the Monday before last in this House. He said:—

"We hope, and we intend—and the Prime Minister will himself make allusion to the way in which he will carry out his intention—to maintain in one way or another consultation with representative Indian opinion at every effective

stage in the process of constructing an all-India constitution."

The method which he then suggested was in the contemplation of His Majesty's Government, was elaborated by him later in the following passage:—

"The fact, therefore, that this particular chapter must, in the nature of things, be brought to an end at some time does not in the least affect the general attitude of the Government in carrying on its expressed intention to maintain the closest possible liaison with Indian opinion and to take representative Indians into consultation in the future processes that are before us."

Sir Samuel Hoare was even more definite towards the conclusion; he then said:—

"Well, Lord Chancellor, I do suggest that as practical men, we had much better face these facts and realise, that being so, it is really better to bring this chapter to an end. I say 'this chapter,' because it by no means closes the book."

Sir, it is because of these statements and because of various things that have happened, to which I do not want to make any particular allusion, that I say we have a right to complain that we have been brought here this year to construct and co-operate with you in the establishment of an all-India Federation with Central responsibility and such safeguards as we may agree upon; and we are now told that we must bring this chapter to an end and go forward.

I am glad to hear that His Majesty's Government are prepared to reconsider the position. If they do reconsider the position, I say, and I claim it as a matter of right for those who have been invited this year, that it is not fair to them to say: "You have come here to deal with Central responsibility; we have heard your speeches and your suggestions; now we proceed to deal with only Provincial autonomy." The last words of Mr. Macdonald were:

"His Majesty's Government will strive to secure such an amount of agreement as will enable the new constitution to be passed through the British Parliament and to be put into operation with the active goodwill of both countries."

It is that that we now want, Sir; an Indian Constitution dealing with Provincial autonomy, as well as Central responsibility. Without that we think it would not have been right for you to have invited us to come and take part.

*Pandit M. M. Malaviya\** : My Lord Chancellor, I pointed out yesterday that the Congress has for a long time past been asking for responsibility to be established in the Central Government of India. I read from a passage of a criticism which I have published of the Montagu-Chelmsford Report: How oppressed we felt that the Montagu-Chelmsford Reforms did not provide for the establishment

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\* Continued from page 1186.



of responsibility in the Central Government. That was in 1918. Since that time the Congress every time it met recorded its conviction that full responsible government should be established in India at the earliest possible opportunity.

In 1924 the Legislative Assembly discussed the subject and passed a resolution by 76 votes against 48, which included a number of officials, demanding the establishment of full responsible government in India. Since that time, since 1924, on several occasions the Assembly again drew the attention of the Government to the necessity for the establishment of such government. In 1927 when the Simon Commission was appointed very great indignation was felt in India that not a single Indian had been thought to be fit to occupy a seat on that Commission, which was to enquire into the affairs of India and to make recommendations for the future constitution of the Government of India. While the boycott of that Commission was practically complete many discussions were going on as to what the next step should be, and Lord Irwin found that there was a great necessity for taking some action which would undo the evil effect which had been produced by the exclusive composition of the Simon Commission and lead the way to further progress. You will remember, My Lord, that Lord Irwin decided to take leave and to come to England. On the eve of his departure for England on leave I took the liberty of writing to him a letter from which I wish to read two short extracts, in order to remind this Committee of the state of things which had been established in India at that time. In 1928 the National Congress in session at Calcutta passed a resolution demanding the establishment of Dominion Status within the year 1929. In the middle of 1929 Lord Irwin was coming here on leave, and in my letter to him I wrote:—

“ I have travelled a good deal during the last two months, in the Central Provinces, in Madras, and the Punjab and Sindh, and have addressed very largely attended meetings and held private conversations with numerous men. I have found abundant evidence everywhere that the desire of the people for the establishment of complete self-government is growing keener and wider every day. The ideal of Dominion Status still holds the field with the majority of thoughtful people. But it is accompanied with a widespread belief that England will not agree to establish it and that freedom will have to be fought for and won. The ideal of complete independence is consequently gaining an increasing number of adherents. The minds of millions are fixed on the 31st of December, 1929.

The regrettable murder of Saunders and the throwing of the bombs in the Assembly are clear indications that a new temper is growing, particularly among the younger generations. It is only a very few of us who can talk of Dominion Status at a public meeting without interruptions in favour of complete independence and without being exposed to ridicule. The absence of any pronouncement on behalf of the British

Government in favour of the probability of Dominion Status being established at the next revision of the Statute is helping to accentuate feeling against the Government and weakening the position of those of us who stand for Dominion Status.

The advent of the Labour Government to power at this juncture is from our point of view a happy event. It is much to be desired that the Labour Government will take the situation into its early consideration and take some action which will give an assurance to Indians that the demand for Dominion Status is going to be seriously considered."

Now, Lord Irwin had said in one of his speeches that he would faithfully represent the wishes of the people of India to His Majesty's Government. Referring to that, I said:—

" You have promised that you will strive to fulfil to the best of your ability the duty of interpreting as faithfully as you may, the hopes, the feelings, the desires of the Indian people to His Majesty's Government and ' to beg His Majesty's Government even to place the most favourable construction on all their proceedings.' I have no doubt that Your Excellency will strive to the utmost of your power to do so. But when you have done all you can pray remember that neither you nor your countrymen, who have happily not known the pain and humiliation of living under a foreign rule, can fully realise the depth of our feelings and desires on the question of our regaining freedom to administer our own affairs. If therefore you desire to be fully fair to us and to establish our relations permanently on a basis of friendship, honourable and beneficial to both countries, I hope you will not try to bring about any agreement amongst yourselves, if it falls short of the establishment of a Dominion Government, without affording opportunity for a full discussion of the matter to the accredited representatives of British India and the Indian States at a Conference invited by the Cabinet of England. I feel very hopeful that such a Conference will bring about a thoroughly satisfactory solution of the great problem that confronts us."

I am glad to think that a declaration was made by His Majesty's Government when the Viceroy went back to India. That was on 31st March, 1929. In pursuance of that declaration the Round Table Conference was called. I have mentioned this to remind the Committee that throughout the demand has been for the establishment of full responsible government in India. The Congress met in December, 1929, and decided upon passing a resolution for complete independence. That was on 31st December, 1929.

Subsequently, on the 19th January, 1931, the Prime Minister here made the declaration to which my friend has referred. This declaration was as follows:—

" The view of His Majesty's Government is that responsibility for the government of India should be placed upon

Legislatures, Central and Provincial, with such provisions as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances, and also with such guarantees as are required by minorities to protect their political liberties and rights."

Your Lordship will notice that it says "Legislatures, Central and Provincial." When this declaration was made, it was felt that there was a way left open for Congress to negotiate with the Government. The Prime Minister himself had held out the invitation to Mahatma Gandhi and the Congressmen generally that they should come and take part in the Conference. When correspondence took place between Lord Irwin and Mahatma Gandhi, on the basis of which the agreement was arrived at which has brought Mahatma Gandhi here, Your Lordship will remember that one of the most important things in that pact was paragraph 2, which says:—

"As regards constitutional questions, the scope of future discussion is stated, with the assent of His Majesty's Government, to be with the object of considering further the scheme for the constitutional government of India discussed at the Round Table Conference. Of the scheme there outlined Federation is an essential part; so also are Indian responsibility and reservations or safeguards in the interests of India on such matters as, for instance, Defence, External Affairs, the position of Minorities, the financial credit of India and the discharge of obligations"

It was on the basis of this agreement that the Congress agreed to be represented at this Conference and that Mahatma Gandhi came here; and, My Lord, every question that was referred to in this matter related to the establishment of a Central responsible government in India.

The Princes were invited to join the Federation. Your Lordship will remember they made it clear last year they would only federate with a self-governing India, and not with an India which was not self-governing. The establishment of responsibility in the Central Government was therefore a vital element in the agreement of the Princes to federate with British India.

Here, My Lord, all the discussions which have taken place have repeatedly reminded us that we were discussing the question of the establishment of responsibility at the Centre. When the Prime Minister the other day made a statement, and when you, Lord Chancellor, as Chairman of this Committee made your statement, it was felt that perhaps the matter was clear; but it unfortunately so happened that the Secretary of State, Sir Samuel Hoare, was absent on the day when the Prime Minister spoke here, and, when he came the following day, he made a statement which took many of us by surprise, because we thought that while the Prime Minister was the head of the Government what he said represented the mind of the Government. The statement made by Sir Samuel Hoare, to which reference has been made by my friend Mr. Rangaswami Iyengar,

came as a great shock to us, showing that there was a wide difference of opinion between the members of the Government on this vital question.

*Sir Samuel Hoare* : Perhaps I had better put that right at once. There has been no difference of opinion of any kind.

*Pandit M. M. Malaviya* : I am very glad to hear that from Sir Samuel Hoare, but Sir Samuel will recognise that I had some justification for the observations I have made because of what he said in this Committee and what the Prime Minister had said.

*Sir Samuel Hoare* : I am afraid I do not; I do not see any difference between them.

*Pandit M. M. Malaviya* : I am very glad if the difference has been obliterated from your mind during the time that has elapsed.

Now, Lord Chancellor, I have referred to these facts to show that India has been asking for the establishment of full responsible government in the country, and that no one in these extracts which I have given has made any reference to the establishment of mere Provincial autonomy. Why should the Princes have been invited to take part in this Conference if provincial autonomy only was to be considered? Why should the questions of the Army Defence, and Foreign Affairs have been brought into discussion before this Conference either last year or this year if provincial autonomy only was to be achieved in the first instance? Why should the question of safeguards and the question of currency and exchange have been debated both last year and this year if the establishment of responsibility at the Centre was not the main object before the Conference? It has come, therefore, My Lord, as a very great surprise to us that there should have been this talk indulged in about the establishment of provincial autonomy as the first step in the scheme of reforms. We have felt all along that the Government of India in India is the heart of the administrative machinery, and that unless the heart is put on a sound and healthy basis there can be no healthy existence in the Provinces. We have felt that we want a united India, an India which will be united though it is divided into States and Provinces; and for that India it is essential that the Princes should come into the Federation. But the Princes cannot come into the Federation, and that chapter has to be closed if it is decided to proceed only with autonomy in the Provinces. I submit, therefore, that this question should not have been raised, and that the method should have been adhered to of proceeding to discuss the vital questions that we have been discussing during the last few days, come to an agreement upon them, and report to the Plenary Conference, so that the result of the Conference may be communicated to His Majesty's Government.

Sir Samuel Hoare has said that the Government have not arrived at any irrevocable decision. He has said that the matter is still being considered. I am exceedingly glad to hear that. I hope that they will not commit the mistake of deciding to confine their efforts for the present to bringing about a Provincial Autonomy

Bill, because that would be regarded, I regret to say it, as a clear breach of faith on the part of the British Government with the people of India. It will do more damage than anything else I can think of in the relations of India and England. What is the alternative that you have before you? If it is decided that Provincial autonomy should be all that should be introduced at present, though there is held out a promise in the preamble or otherwise, that responsibility at the Centre will be established at an early date, the people will think that they have been defrauded, that they have not been treated fairly in discussing this question which is vitally affecting their position. The unrest that exists in India will multiply tenfold. The sense of depression that is going on in India will increase tenfold. You will have an India, restless, unhappy, torn by strife, not a matter of satisfaction either to you Englishmen or to the Indians. You will have an India where you will find the strife renewed that has in one sense been going on for the last ten years. Few men here who were not in India last year can realise the depth of feeling which prevails among the people. Those statesmen and public men who were in India a few years ago cannot draw a vivid and real picture of the state of things which exists to-day. Since the resolution for complete independence was passed at the Lahore Congress on the 21st December, 1929, the desire for freedom has become much more intense. The manhood of India has risen in a body to a new appreciation. There is an intense desire for the realisation of the freedom of the Motherland. The womanhood of India has been touched by the fire of patriotism. The women who used to be shut up in the Zenana came out in thousands during the last year of the war, not merely to attend meetings but to lead processions in the streets and to bear *lathi* charges which, unfortunately to the shame of the Government, were inflicted upon some of them. Even little children have been infected by the fire of patriotism. In all my life the most wonderful speech I ever heard was that delivered by a little lad ten years old. I was to visit Jhelum; I was to go there on a particular day. I was detained on the way by another meeting which people pressed me to attend. The boys got up a demonstration. They wanted to go and receive me at the railway station when the Congress left. Thirteen lads, some ten years of age, some younger, some older, went there. The station happened to lie, a portion of it, in the Cantonment area. They were told they could not. They used to go every day all the year round to the station by that same passage.

*Lord Reading:* Lord Chancellor, may I ask, on a point of order, is this in order? If we are to have instances of this kind discussed, are we to let them pass without a reply? And if we are to reply, what becomes of the Federal Structure Committee?

*Sir Samuel Hoare:* Hear, hear.

*Pandit M. M. Malaviya:* My Lord, I bow to the suggestion of Lord Reading, but my clear purpose is to indicate to you what is coming on if you fail to adhere to your promise.

*Chairman:* Yes, we quite appreciate that.

*Pandit M. M. Malaviya:* I want to say one word more. It is very painful to me. I only want to give Your Lordship and other members of the British Delegation an idea of what the alternative picture will be which you and I—we more than you—will have to face. I beg Your Lordships not to think it is a pleasure to me to refer to these matters.

*Chairman:* Well, I am quite sure you will exercise a wise discretion.

*Pandit M. M. Malaviya:* I will just complete this My Lord. This young lad and his twelve colleagues were hauled up and tried. When I reached that place, Jhelum, on the following day I went to the Court and found they were being tried. When we went back to address the meeting, these lads had been released. The Magistrate had had the good sense to release them. Then one of these lads got up on the table and made a short speech, the like of which I have not heard in my life. He said: "Before I started I told you boys that those of you who were not prepared to face charges and bear punishment should go back. You did not go back. Some of you fled away. It was a shame that you did so."

My Lord, I have mentioned this incident to show to you that the youth and children of India are thirsting for this freedom. You cannot satisfy that thirst without complying with the demand of the nation that there should be established national self-government in India. In all lands you have faced those who have fought for freedom. Will you make an exception in India, and will you condemn the Indian men and women if they are prepared to fight for freedom and win it? We have tried the effect of argument and reason. We have come here at your invitation, for which we are thankful, to discuss the matter and settle it by argument and reason and to tell you what is our view. If you turn this proposal down, if you adopt a course which will show to the people that the fears of those who told us, "They will not give it to you by argument and reason"—if you give an opportunity to those to say they were right and we were wrong, where shall we stand and what will be the fate of India?

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We should be able to arrive at conclusions which should be reported to His Majesty's Government. His Majesty's Government should incorporate the recommendations we make in the provisions of a Bill and there should be full responsible self-government in India, subject to those safeguards and reservations we have been discussing in this Committee. There has been more agreement than differences on vital questions such as the Army, External Relations, Financial Safeguards and Commercial Discrimination. On that I claim there has been a greater measure of agreement than of difference, and for that I must say we are very grateful for the

help Lord Reading has given, particularly in the matter of Financial Safeguards and Commercial Discrimination, and for the help of other European gentlemen. We have arrived at conclusions almost acceptable to all, and what differences are left can be settled and solved by such other friendly discussions as may be necessary. I do not see any reason why these vital questions should not be reported upon as a result of this Conference in a satisfactory manner. Sir Samuel Hoare said that there would be further deliberations and that consultations would continue. He said "this book is closed, and a new book is to be opened." I venture to ask who will look into the book if you fail to carry out your pledges to carry on the Conference. If I have spoken warmly I have done so because I feel that the interests of vast millions of my people are concerned. To-day you are discussing these matters in the cold atmosphere of England, but you do not know what the repercussions of your speeches may be in India. I am anxious that this Conference shall not break down, shall not end without completing its work, namely, arriving at conclusions on the large questions we are discussing. Now, Mr. Jinnah and Sir Muhammad Shafi have said that they do not want to stand in the way of such conclusions. On the contrary they have indicated that no constitution will be acceptable to them—or, let me say, to any one of us on this side—if it does not provide all reasonable protection to minorities. We are anxious to provide protection for minorities, but the larger question which has to be settled is between England and India, and I submit that every member of the British Delegation should make it clear to the British Parliament and to the public of England that here we are seeking a settlement by agreement. If you say that you cannot frame a Statute now I can understand that. The framing of a Statute will take time. But cannot you arrive at an agreement such as was arrived at in regard to Ireland with Michael Collins and the other delegates with him? They arrived at an agreement on the main points. Of course they arrived at agreement after a bloody war. We want to arrive at an agreement under happier conditions. Cannot you arrive at a similar agreement by which the main points will be settled and will form the basis of a Statute? If you once do that I venture to say that Mr. Gandhi will accept that as a practical proof of your intention to fulfil the pledges you have given. If that agreement is arrived at, then whatever time is necessary may be taken in drawing up a Statute. I do not agree with the view—with all deference to the lawyers—that three years will be needed to put the ideas we have arrived at into a Statute. Many of us have been members of legislative councils and have had some hand in law-making. I suggest that with the talent available in England—with the talent we have the good fortune of having at our disposal in our distinguished Chairman—it should not be difficult for our English friends, working in consultation with Sir Tej Bahadur Sapru and Mr. Jinnah and others, to frame a constitution within a reasonable period of time. If the people of India know that you have arrived at an agreement which

is to be taken as the basis in framing a constitution such as we desire, I venture to say that they will be satisfied. One thing more ought to be done. Let agreement be recorded. Let the fact be declared by the Prime Minister on behalf of the Government without anything being kept back from the people. Let there be a declaration by the Government that they are prepared to agree with the conclusions arrived at by this Conference. My Lord, the statute may take time to frame, but if we arrive at an agreement satisfactory to all business interests, an agreement satisfactory to all commercial companies, an agreement satisfactory to the trading interests, an agreement satisfactory to the Army people, a settlement which the Government are prepared to accept, there should be a new departure in India. The policy of Dominion Status should be adopted. The people should be taken into consultation. The leaders of public opinion should be taken into consultation and their services enlisted to prevent terrorism from carrying on its nefarious work. We should be allowed to co-operate with the Government to establish law and order, and to see that the business men whether Europeans or Indians, can carry on their business in happy circumstances.

On the other hand, if that is not done and if a different policy is to be followed, then I submit it will be a great wrong to India, and a great wrong to England also, because I believe—it is my firm conviction—that the British people do not want any injustice to be done to their fellow-subjects. I am sure they do understand that we Indians have just as much right to desire self-government and press for it and—if driven to it—fight for it as any other people. If that conviction is brought home to the British public, I am sure that a new chapter will open in the relations between India and England.

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*Mr. Wedgwood Benn:* Lord Chancellor, I will say in the first place that everybody who engages in this vital discussion must do so under a sense of very great responsibility; but, if it is our duty to speak with a sense of responsibility, it is also our duty to speak fearlessly and with complete courage.

I should like to say this in passing. Let me assure Mr. Gavin Jones of this, that so far as we are concerned, we are standing for peace and order in India. I myself have had serious responsibilities in regard to the maintenance of peace and order, and I regard this Conference, and even our contribution to it, as an attempt to maintain peace and order in India. This Conference stands as the enemy of all diehards, whether they are diehards on the left or diehards on the right; and I can assure Mr. Gavin Jones, who pleasantly interwove his personal views with the expression of the opinion of his delegation, that we stand here not only for the maintenance of order, but also for dealing radically with the matter in such a way as to make the maintenance of order permanently possible.



Now, Lord Chancellor, I regret extremely that so far as I can learn we are not to have any contribution whatever from the Government of a conclusive or decisive kind on this matter. We had a speech from the Secretary of State yesterday which contributed nothing whatever to the discussion, a speech saying that the Government intended to stand by its pledges and that no one had impugned its honour, but not in any way relevant to the subject raised, namely, whether or not it was the intention of the Government that simultaneous advance should be made both at the Centre and in the Provinces

Now, Lord Chancellor, as far as this Committee is concerned I must draw attention once again to the speech of the Viceroy on the 9th July, 1930, inviting representative Indians to come to London and describing the terms of the discussions in which they were to be asked to engage. He said they were not to be academic discussions; he said they were to be deliberations, and he said that if agreement could be reached, on that agreement proposals would be formulated and laid before Parliament. Forgive me for saying this, My Lord Chancellor, but our experience during the last week has been the very reverse. We have found that in some way a sort of strangehold has appeared on the deliberations of this Committee at the very moment when we were approaching what were indeed the vital issues. Such expressions were used as that the Government would be glad to hear all expressions of opinion. The Pandit was assured that he would go back to India with the relief that he had expressed himself. Now that is not the purpose of this Committee. The purpose of this Committee is to deliberate, and when agreement is reached, to formulate proposals to lay before Parliament. That purpose is not expressed by me here for the first time. That purpose was expressed officially on behalf of the Government whose policy we are told is unchanged, by the Viceroy, Lord Irwin, on the 9th January, 1930. We now learn that it is not the intention of this Committee to make even a report on this very vital issue. I am not in the position and I should not attempt to challenge the validity of that ruling. It comes from the highest authority, but it certainly throws a new light on the character of our discussion.

Now so far as the matter of the discussion is concerned, what is it? It is this. There is a fear that what will really happen will be that we shall get the Statutory Commission's recommendations put into force as early as possible, and that the hopes by which this Conference is animated, namely, central responsibility, will be deferred to some undefined future. Those fears are based not only on the realities of the Parliamentary situation, but they are based upon some of the remarks which have fallen from the Secretary of State, and they are based particularly on the fact that in this vital discussion we have not had any indication whether or not the Government intend to dispel them. Let me remind you that, so far as this discussion is concerned, there has been, I should say almost for the first time in our discussions, complete unanimity. If you

look round this table from your left, round the table to your right, you will find that, except for the silent Government, everybody has expressed the opinion that there should be a simultaneous advance. The Muslim Delegation, whose patriotism has never for one moment been in doubt, has said, and we in these seats cordially agree with them, that it is impossible that this advance should take place until satisfactory guarantees are given to them and to the other minorities. With that statement we have always associated ourselves. But I would remind you that, if it is the intention of the Government to advance with Provincial autonomy first, it would be necessary that the communal settlement should be settled before such an advance can take place, and if that question therefore is settled, there is nothing to stand in the way of what I say—and it is beyond contradiction—is the unanimous desire of this Committee. I say the unanimous desire of this Committee is that the advance should be simultaneous.

Just one word and I have finished. The calling of this Conference has been a great task. Two years ago there was no spirit of co-operation in India. Many of the gentlemen gathered round this table were not co-operating with the British Parliament. They were unwilling to co-operate with the British Parliament. We passed through a time of great trouble and great sorrow to both peoples. We toiled and toiled in order to promote a spirit of co-operation. Here it is. Here you see a Conference the like of which has never been seen in the relations between Great Britain and India. The part played in that task by Lord Irwin will never be forgotten in the history of India. Is this co-operation to end by a silent Government which will note our remarks, but will not report on our remarks, and which will finally present us with a mere ukase, which will be the final scene of this Conference, giving some decision we know not what, but which may be in direct conflict with the desires of this Committee? The whole of the peace in India and the co-operation between the British and Indian peoples and all the rest is at stake at this moment, and I do beg you most earnestly that we may have some assurance from the Government that by a concession to what is the unanimous demand of this Committee, we may continue the way of peace and goodwill between the peoples of both countries. And I do beg of you most earnestly, Lord Chancellor, that we may have some assurance from the Government that, by a concession to what is the unanimous demand of this Committee, we may continue the way of peace and goodwill between the peoples of both countries.

*Chairman:* I only want to add one word to Mr. Bunn's speech, and that is this. He has mentioned that Lord Irwin had a good deal to do with the calling of this Conference. I think that is quite true and I think the Conference has done a great deal of good. But I should like to be permitted to say also, that Mr. Bunn had a great deal to do with summoning this Conference. I quite sympathise. I suppose a child cannot have two fathers, but I think this Confer-

ence has had two fathers: Lord Irwin and Mr. Benn. Mr. Benn is very anxious, of course, that the Conference should not fail, so am I. I am sure we all recognise very much the difficult position Mr. Benn is in, and I personally am very glad that we continue to have his assistance.

Now that finishes the debate upon this. I will report to the Cabinet. Now I think we can do this:

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*Financial Safeguards (continued).*

*Sir Samuel Hoare:* Lord Chancellor, I should like to begin with a word of apology to the Committee for breaking in with a short statement about Finance at this moment. I could not be here yesterday afternoon because I was in charge of a Bill in the House of Commons. The Government thought that before the Committee considers the Report upon financial safeguards, not only would it be courteous, but indeed it was necessary that I should make a short statement on their behalf, and it is with that intention that I venture to encroach upon your time and the rules of order at this moment.

Lord Chancellor, I have listened with great interest to a part of the debate upon Finance and I have read the speeches that were made when I was unfortunately called away to the House of Commons. Let me at once say that it has in my view been a useful discussion, and that upon the whole members of the Committee on all sides of the table have accepted very wisely the Lord Chancellor's word of friendly caution. The Committee has in my view been very prudent in following this course.

We have been discussing a subject that differs in many respects from the constitutional questions that have formed so large a part of our debates. What matters in finance—and here I speak as a member of a family that has for generations been connected with the City of London—is not agreement or disagreement among politicians but confidence in the great markets of the world. In any contemplated changes, therefore, the people that we have to convince are the bankers, and traders and investors. If we do not convince them neither Indian nor any other credit can remain stable. Rightly or wrongly these traders, bankers, investors are very cautious people. Particularly are they nervous of politicians and political changes. If we are to retain their support we must consequently carry them with us and though it may seem to be a slow process to many politicians it is essential that we should convince them if we are to retain the great advantages of cheap credit, easy money and a plentiful supply of the capital that India so greatly needs for its development.

When we talk of safeguards we are not gratuitously creating obstacles for the purpose of blocking Indian progress. We are genuinely trying in the interests of India herself to satisfy the con-

ditions that are in our honest view essential to Indian stability and Indian prosperity. It was on this account that last year when we were discussing this question Lord Peel and I, speaking for the Conservative Party, were nervous lest the Committee's proposals should injure Indian credit. Since then the world has been facing a financial and economic blizzard. The credit of some nations and institutions has been shaken to the very foundations. The finance of every continent has been in a state of flux. I imagine most of the members of the Committee if they were asked in these abnormal times to give their candid opinion upon any of the financial questions that we are to-day discussing would, for those reasons, be on the side of caution. If I myself were asked at the present abnormal moment to define in full detail my conception of safeguards it might well be that I should have to demand more rigid machinery for ensuring them than I should need at a time when the world becomes more normal. Let me, therefore, support the warning given by Lord Reading that we should continue to avoid too great detail and let me confine myself to a general statement of the Government's attitude. The safeguards to be provided to secure the fulfilment of the obligations for which the British Government will remain responsible and to ensure the maintenance of the financial stability of India must be effective safeguards. Provided those objects are effectively secured we desire that any all-India Federation that may be established should enjoy the greatest possible measure of financial independence within its own sphere. One word as to the necessity of safeguards. So long as the Crown remains responsible for the defence of India the funds necessary for that purpose will have to be provided and the principal and interest on sterling debt issued in the name of the Secretary of State for India must be secured as must also the salaries and pensions of officers appointed under parliamentary authority, and as the provident and pension funds which have been fed by subscriptions from officers have never been funded but remain a floating obligation on the revenues of India responsibility for payments to retired officers and their dependents must remain with the Secretary of State until any new Government is in a position to provide sufficient capital to enable trust funds to be established. The annual charges under these various heads will amount in the aggregate to a considerable portion of Federal revenues, and for this reason it is necessary to include in the constitution provisions sufficient to ensure that those obligations are met. This means in effect that the safeguards to be provided must ensure the maintenance of financial stability and credit and this, in its turn, depends upon provisions in a new Budget to control the balance, that the sinking fund arrangements are adequate, that capital and revenue expenditure are allotted on sound lines, that excessive borrowing or borrowing for revenue purposes is not undertaken, and that a prudent monetary policy is consistently pursued. So far as the Budget is concerned, this by no means implies that the Governor-General would control its preparation in detail. Provided the

Budget is properly balanced, the Federal Government can have wide discretion to decide both upon the nature of the taxation to be imposed and upon the objects of expenditure, other than expenditure under the reserved heads.

It is, as I have noticed, held in some quarters that no safeguards should be embodied in the constitution unless it can be shown to demonstration that they are in Indian interests. Happily there is no conflict here between British and Indian interests, and I am confident that every member of this Committee, to whatever section he belongs, would agree that it is in the best interests of India that the financial stability and credit of the country should be maintained.

Now, you may say "Let us know what safeguards you propose to effect the objects you have in view; formulate them and describe them to us in detail." That, in ordinary conditions, is a reasonable request, but nevertheless I do suggest that at the present moment it would be undesirable to do this. I am not sheltering myself behind the fact that certain sections of the Committee are unwilling to participate in these discussions until other matters of a political character have been settled. Nothing of the kind; my reasons are entirely different, and they are these. To-day, as I have just said, the world is passing through this financial and economic crisis. Trade is depressed. Most national budgets are unbalanced and the currency systems are disorganised. From these evils India has not escaped, and, as you all know, His Majesty's Government have given certain undertakings that, if the need arises, they will seek Parliamentary authority to come to her assistance.

That being the position, if we were required here and now to formulate the safeguards which would effectively secure the maintenance of the financial stability and credit of India, it is evident that these safeguards would have to be of a very rigid character. Apart from this, the structure of the new constitution is still under discussion, and it is evident that the precise nature of the safeguards to be provided must fit in to the constitutional structure as finally determined.

It, therefore, seems to me that nothing would be lost and everything gained if we postponed for the present a discussion of details.

The Reserve Bank has bulked largely, and rightly so, in our discussions, and I should like to say one word about this. We are all, I think, agreed that a Reserve Bank should be established with as little delay as possible, a bank secure with adequate resources, free from political influence and independent of government. I need hardly say that if such a bank could be established, the formulation of financial safeguards would be greatly simplified, but, even if the gold and sterling assets necessary were available—and we are a long way removed from this—would any reasonable person advocate the establishment of a Reserve Bank at a time like the present, when monetary conditions all over the world are disorgan-

ised and when no one can predict what currency system in harmony with world conditions will be found to be best adapted to Indian interests.

Let me, in conclusion, briefly summarise the position. Our objective is unchanged. The first essential for the security of India's position as a nation and for the prosperity of her people is the maintenance of confidence in her financial stability and credit. Accordingly, safeguards recognised as effective must be settled which will ensure that the finances of India are properly administered and that the obligations for which the British Government will remain responsible are met. Subject to such safeguards, we desire to give to the new Federal Government, when it is established, the greatest possible measure of financial responsibility within its own sphere, but, for the reasons that I have given, and which I hope generally will commend themselves to the Committee, we do not think that the time has come when it is desirable to formulate the precise machinery by which to give effect to the safeguards to which I have alluded. I have no doubt in my own mind that the policy that I have outlined is in the best interests of India. Looking at the matter purely from the Indian standpoint, can it be doubted that the highest interests of the country will best be served by making such provisions as will ensure that, whilst a new constitution is developing, confidence both in India itself and in the outside world is assured.

*Chairman:* We are very much obliged to Sir Samuel Hoare. Now we have twenty-five minutes left, and I do not think I need trouble you much on the Report on Commercial Discrimination.

#### *Consideration of the draft Fourth Report on Commercial Discrimination.*

*Chairman:* Will you please take the draft Report in your hands. I do not think it will take very long, because what I have done is that I have asked various members to let me have their views and I have incorporated them. I will just read it through in the way we usually do and then come back to each paragraph. It is the fourth Report of the Federal Structure Committee, on Commercial Discrimination.

*(The Chairman here read the paragraphs of the draft Fourth Report dealing with Commercial Discrimination.)\**

1. On this subject the Committee are glad to be able to record a substantial measure of agreement. They recall that in paragraph 22 of their Report at the last Conference it was stated that there was general agreement that in matters of trade and commerce the principle of equality of treatment ought to be established, and that the Committee of the whole

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\* These paragraphs, as amended in consequence of the ensuing discussion, are printed as paragraphs 16—26 of the Fourth Report of the Federal Structure Committee, see pages 488 to 491.

Conference at their meeting on January 19th, 1931, adopted the following paragraph as part of the Report of the Report of the Minorities sub-Committee:—

“ At the instance of the British commercial community the principle was generally agreed that there should be no discrimination between the rights of the British mercantile community, firms and companies trading in India, and the rights of Indian born subjects, and that an appropriate Convention based on reciprocity should be entered into for the purpose of regulating these rights.”

More than one member in the course of the discussion also reminded the Committee that the All-Parties Conference in 1928 stated in their Report that “ it is inconceivable that there can be any discriminating legislation against any community doing business lawfully in India.”

2. The Committee accept and re-affirm the principle that equal rights and equal opportunities should be afforded to those lawfully engaged in commerce and industry within the territory of the Federation, and such differences as have manifested themselves are mainly (though not entirely) concerned with the limits within which the principle should operate and the best method of giving effect to it.

3. The Committee are of opinion that no subject of the Crown who may be ordinarily resident or carrying on trade or business in British India, should be subjected to any disability or discrimination, legislative or administrative, by reason of his race, descent, religion, or place of birth, in respect of taxation, the holding of property, the carrying on of any profession, trade or business, or in respect of residence or travel. The expression “ subject ” must here be understood as including firms, companies and corporations registered or carrying on business within the areas of the Federation, as well as private individuals. The Committee are also of opinion that *mutatis mutandis* the principle should be made applicable in respect of the same matters so far as they fall within the federal sphere, in the case of Indian States which become members of the Federation and the subjects of those States.

4. It will be observed that the suggestion contained in the preceding paragraph is not restricted to matters of commercial discrimination only, nor to the European community as such. It appears to the Committee that the question of commercial discrimination is only one aspect, though a most important one, of a much wider question, which affects the interests of all communities alike, if due effect is to be given to the principle of equal rights and opportunities for all.

5. More than one member of the Committee expressed anxiety lest a provision in the Constitution on the above lines

should hamper the freedom of action of the future Indian Legislature in promoting what it might regard as the legitimate economic interests of India. The Committee do not think that these fears are well-founded. Key industries can be protected and unfair competition penalised without the use of discriminatory measures. The Committee are, however, of opinion that it should be made clear that where the Legislature has determined upon some system of bounties or subsidies for the purpose of encouraging local industries, the right to attach reasonable conditions to any such grant from public funds is fully recognised, as it was recognised in 1925 by the External Capital Committee, and is recognised to-day by the practice of the Government of India itself.

6. It should, however, also be made clear that bounties or subsidies, if offered, would be available to all who were willing to comply with the conditions prescribed. The principle should be a fair field and no favour. Thus a good deal was said in the course of the discussion of the need for enabling Indian concerns to compete more effectively with larger and longer-established businesses, usually under British management and financed with British capital. Where the larger business makes use of unfair methods of competition, the general law should be sufficient to deal with it; but many members of the Committee were impressed with the danger of admitting a claim to legislate, not for the purpose of regulating unfair competition generally but of destroying in a particular case the competitive power of a large industry in order to promote the interests of a smaller one.

7. With regard to method, it appears to the Committee that the constitution should contain a clause prohibiting legislative or administrative discrimination in the matters set out above and defining those persons and bodies to whom the clause is to apply. A completely satisfactory clause would no doubt be difficult to frame and the Committee have not attempted the task themselves. They content themselves with saying that (despite the contrary view expressed by the Statutory Commission in paragraph 156 of their Report) they see no reason to doubt that an experienced Parliamentary draftsman would be able to devise an adequate and workable formula, which it would not be beyond the competence of a Court of Law to interpret and make effective. With regard to the persons and bodies to whom the clause will apply, it was suggested by some that the constitution should define those persons who are to be regarded as "citizens" of the Federation, and that the clause should apply to the "citizens" as so defined; this indeed was a suggestion which had been made by the All-Parties Conference. There are, however, disadvantages in attempting to define the ambit of economic rights in terms of a political definition, and a



definition which included a corporation or limited company in the expression "citizen" would be in any event highly artificial. The Committee are of opinion therefore that the clause should itself describe those persons and bodies to whom it is to be applicable on the lines of paragraph 3 and that the question should not be complicated by definitions of citizenship.

8. If the above proposals are adopted, discriminatory legislation would be a matter for review by the Federal Court. To some extent this would also be true of administrative discrimination; but the real safeguard against the latter must be looked for rather in the good faith and common sense of the different branches of the executive government, reinforced where necessary by the special powers vested in the Governor-General and the Provincial Governors. It is also plain that where the Governor-General or a Provincial Governor is satisfied that proposed legislation, though possibly not on the face of it discriminatory, nevertheless will be discriminatory in fact, he will be called upon, in virtue of his special obligations in relation to minorities, to consider whether it is not his duty to refuse his assent to the Bill or to reserve it for the signification of His Majesty's pleasure.

9. The question of persons and bodies in the United Kingdom trading with India, but neither resident nor possessing establishments there, requires rather different treatment. Such persons and bodies clearly do not stand on the same footing as those with whom this Report has hitherto been dealing. Nevertheless, the Committee were generally of opinion that, subject to certain reservations, they ought to be freely accorded upon a basis of reciprocity the right to enter and trade with India. It will be for the future Indian Legislature to decide whether and to what extent such rights should be accorded to others than individuals ordinarily resident in the United Kingdom or companies registered there, subject of course to similar rights being accorded to residents in India and to Indian companies. It is scarcely necessary to say that nothing in this paragraph is intended to limit in any way the power to impose duties upon imports into India, or otherwise to regulate its foreign trade.

10. It had been suggested at the last Conference, and the suggestion was made again in the course of the discussion in the Committee, that the above matters might be conveniently dealt with by means of a Convention to be made between the two countries, setting out in greater detail than it was thought would be possible in a clause in an Act the various topics on which agreement can be secured. The idea is an attractive one, but appears to present certain practical difficulties. The Committee understand that the intention of those who suggested it is that the Convention, if made,

should be scheduled to and become part of the Constitution Act. It was, however, pointed out that such a detailed Convention would be more appropriately made between the United Kingdom and the future Indian Government when the latter was constituted, and that in any event it seemed scarcely appropriate in a Constitution Act. On the other hand, the Committee are of opinion that an appropriately drafted clause might be included in the Constitution itself, recognising the rights of persons and bodies in the United Kingdom to enter and trade with India on terms no less favourable than those on which persons and bodies in India enter and trade with the United Kingdom.

11. In conclusion, there was general agreement to the proposal that property rights should be guaranteed in the Constitution, and that provision should be made whereby no person can be deprived of his property, save by due process of law and for public purposes, and then only on payment of fair and just compensation to be assessed by a Judicial Tribunal. Such a provision appears to the Committee to be a necessary complement of the earlier part of this Report. A formula of this kind finds a place in many constitutions and the form used in the Polish Constitution seemed to the Committee to be specially worthy of consideration.

*Chairman:* Are there any comments on paragraph 1?

Then we will pass to paragraph 2.

*Mr. Gandhi:* I should like this added, Lord Chancellor, at the end of that paragraph:—

“Some, however, contend that the future Government should not be burdened with any restraint, save that no discrimination should be made merely on the ground of race, colour or creed.”

*Chairman:* I will certainly put that in. Where do you want that to go?

*Mr. Gandhi:* At the end of the second paragraph.

*Chairman:* Now we come to paragraph 3, please.

*Sir Phiroze Sethna:* May I suggest the addition here of the word “only”? I suggest we should say, “by reason *only* of his race.”

*Chairman:* You want the word “only” put in?

*Sir Phiroze Sethna:* I suggest that.

*Lord Reading:* That implies you can do it for other reasons. Why do you want “only” in?

*Sir Tej Bahadur Sapru:* It would weaken it.

*Chairman:* Yes, it weakens it.

*Sir Samuel Hoare:* I think you had better keep it as it is. I know what you want, but I think it would weaken it if you put that in.

*Chairman*: Now we will take paragraph 4, please.

*Sir Akbar Hydari*: With regard to the last sentence, we should like what His Highness the Nawab of Bhopal said put in here.

*Chairman*: I will ask Mr. Carter to make a note to that effect. That ought to have been in.

*H.H. The Nawab of Bhopal*: You have a note of what I said.

*Sir Akbar Hydari*: The wording may be what His Highness said.

*Chairman*: Yes, I have it.

We will now turn over the page to paragraph 5. I believe you have something on this, Pandit Malaviya?

*Pandit M. M. Malaviya*: Yes. I think it is necessary to be careful here not to go too far. A Swiss or American, or any other Company might come and establish itself in Bombay, or in some other place, and the advantages which the National Government may be prepared to give to a national institution or indigenous institution, it may not be willing to give to an institution which does not come under that description, and we should not encourage the idea, as is done in paragraph 6, that these bounties or subsidies would be available for "all who were willing to comply." The Company might comply with certain conditions, but it might still be unfair to the indigenous industries to grant it assistance.

*Chairman*: I follow your point, and I think we must put your caveat in there.

*Pandit M. M. Malaviya*: It is not a matter of a caveat; if we agree to it, it can be submitted by the Committee.

*Sir Samuel Hoare*: I am not sure about Pandit Malaviya's point. Do you wish to exclude all foreign companies, or foreign companies as distinct from British companies, or what is your suggestion?

*Pandit M. M. Malaviya*: British companies would come under the provisions already laid down. It should be made clear that even British companies which are willing to comply with the rules laid down should not expect to get the advantage of any protective action which may be taken by the Indian Government. They are entitled to ask that there should be no discrimination against them, but they are not entitled to ask that, because they are British, they should have advantages which we may want to give to indigenous concerns.

*Chairman*: I thought the next sentence sounded very well. It came from Mr. Gandhi, and that is why I put it in—"The principle should be a fair field and no favour."

*Mr. Iyengar*: Suppose we decided or desired to give a subsidy to Indian steel as against Belgian steel which is dumped. Would it be right for the Belgian Company to put up plant and machinery in India and apply for the same subsidy?

*Lord Reading:* Does that mean you want it to apply to Indian steel and not to British companies?

*Mr. Iyengar:* That is the point, My Lord. You will remember that when we had the Steel Protection Act we did discuss the matter, and the Legislative Assembly was particularly careful not to make it a condition that British steel, as such, was given a preference. We specified a certain class of steel, to which we gave free access into our country and against which we refused to give a subsidy. I am not referring to the question of giving preference to British steamers, that is a different question. What I am now referring to is the point that the purpose of the subsidy might be defeated if we were to say the subsidy is available for the foreign companies against whom the subsidy is sought to be granted.

*Lord Reading:* What I am trying to ascertain is this: Is your point foreign companies as distinguished from Indian and British companies?

*Mr. Iyengar:* On the question of British companies, My Lord, there are previous paragraphs which deal with the question of discrimination and reciprocity.

*Lord Reading:* But it still leaves that question open. I only want to know what you mean. Do you mean by that that there may be discrimination in this sense that you may give assistance to an Indian company which will not be available to a British company?

*Pandit M. M. Malaviya:* I do mean it, My Lord.

*Lord Reading:* I thought you did.

*Sir Samuel Hoare:* I am entirely against that myself; I think that is quite unfair.

*Pandit M. M. Malaviya:* But my point is that there is a distinction to be made between giving discrimination to a British company and giving advantages to a British company which we want to give to Indian companies. Of course, that would not apply to Europeans who are settled in India or carry on business there.

*Chairman:* I will make a note of your point, Pandit Malaviya; but as at present advised I am afraid I cannot alter that. I should like to discuss the matter again with you. I quite see your point. You say discrimination is not the same thing as giving a bounty. Well, I quite follow what you mean; but I do not want to have repercussions of this thing which may get us into difficulties either here or abroad at present. I will record your opinion. If you and Mr. Iyengar will be kind enough to draw up a short sentence, I can put it at the end of this; so that we will put it in. This is one of those things in which I think we should be rather foolish, having regard to the difficulties of putting tariffs on against people or not giving them bounties, and getting into difficulties with other people, if we are not very careful. What I mean to say is this, it is not the sort of decision we can take at the eleventh hour and the fifty-ninth minute. Let us put your caveat in, let it remain there. It

is one of those things which will have to be discussed again later. I am not against you; I mean I am not against your putting that in; I will certainly have it put in; but as far as I am concerned, I must stick to that paragraph.

*Pandit M. M. Malaviya:* I want to put another point before Your Lordship in regard to what Lord Reading said. Take an ordinary case of a Japanese Company; supposing a Japanese Company goes and settles down in Bombay, starts some business and claims the same advantages that we give to an Indian. I do not think you would like a Japanese Company to be able to claim it of us. Take a Danish Company, a French Company, or an American Company; you would certainly not wish those Companies to be entitled to claim the same advantages that would be granted by a National Government to an Indian Company.

*Sir Samuel Hoare:* Yes, but then what we are interested in is the British Companies. Would you be prepared to say it would be available to all British Companies?

*Mr. Iyengar:* My Lord, I would take it in this way—

*Sir Samuel Hoare:* May I just have an answer to that question?

*Pandit M. M. Malaviya:* May I ask you, Sir Samuel Hoare, and Lord Reading, to help us by saying whether that would be a proper thing to ask for a British Company which is trading in India.

*Sir Samuel Hoare:* My answer would be "Yes."

*Pandit M. M. Malaviya:* That is to say you ask that the protective assistance or bounty or subsidy or other advantage should be given to a British Company which is trading in India merely because it is being given to a national indigenous industry. Such advantages are given to an indigenous industry because they are wanted on principles which are recognised, but to share that advantage with well-established British Companies I do not understand, though I am open to conviction. I should like their help to understand.

*Lord Reading:* I do not want to repeat the argument I have put, but I think what you are saying does bring in the danger that I pointed out when we were discussing it; and you see it does not help us very much to say you would not like this to be done with regard to a Japanese or a Belgian Company. It does not touch the point. The point is that you want to get it in general language, so far as I understand. If I am wrong so much the better. It would make it applicable also to a British Company. You said quite frankly that you did; that is what I pointed out before when I was speaking, that I thought it was most objectionable and I should object to it most strongly. I think if that were done you would destroy everything we are doing at the present moment. I thought the principle was that no distinction would be drawn between a British Company and an Indian Company. Of course,

I mean a British Company which is carrying on its business there. We had already reached that.

*Sir Purshotamdas Thakurdas*: May I ask one question, Lord Reading? Does the last sentence or the previous paragraph apply to this; that is "the right to attach reasonable conditions to any such grant from public funds."

*Lord Reading*: That is the External Capital point, is not it; funds, registration of a Company there, a certain moderate proportion of Directors, and so forth?

*Sir Purshotamdas Thakurdas*: Yes, whatever those may be.

*Lord Reading*: Yes, I expressly said I did not raise any point with regard to that. I agree.

*Sir Purshotamdas Thakurdas*: Then it would not be a bar under this enunciation of the principle of "a fair field and no favour," if the Legislature, when they sanction a bounty or a subsidy, have the power to lay down certain provisions which will qualify for it. They can be such conditions as would suit a certain industry. I only wanted to know whether that last sentence did apply to these and was included in this principle or not.

*Mr. Sastri*: May I ask a question?

*Chairman*: Yes.

*Mr. Sastri*: Is my recollection right that round this table last year as we were discussing this subject, the spokesman of the British Mercantile Community in India admitted that it was perfectly legitimate for the Indian Legislature, where it sanctioned bounties in order to create a certain indigenous industry, to confine it to the industries managed and owned by nationals of India as distinct from non-nationals of India. Am I right in my recollection?

*Chairman*: I did not so recollect that.

*Pandit M. M. Malaviya*: Mr. Benthall said it this year also.

*Mr. Benthall*: I do not recollect it, but I made our position quite clear that we accepted the Report of the External Capital Committee, with one small exception, which was a matter of wording and not of sense.

*Lord Reading*: My recollection is that it never went further than that; it was accepted in that sense, and just in the same way that I think Mr. Benthall spoke and I spoke with regard to it; that is to say that you may have conditions of a rupee company registered in India with a certain proportion of directors. There was a little more controversy about shareholders, for reasons I will not go into now; but otherwise that was agreed.

*Mr. Sastri*: Was it not based on a distinction between nationals and non-nationals?

*Lord Reading*: May I point out, Mr. Sastri, that that strikes fundamentally at the root of non-discrimination if you do that generally. You cannot possibly do that and maintain the principle of

no discrimination; because if you were right, you see, it would be possible then to do the very thing which you remember I suggested was the dangerous point; that is to subsidise an indigenous industry with the idea that it would compete successfully with a British industry, that is a British-owned industry which had been carrying on its business there for a number of years and made its reputation there. That was the very point.

*Mr. Sastri*: But, Lord Reading, I think this opens a very wide door. When the Legislature grants a subsidy to an industry it as a matter of fact takes the subsidy out of the general funds raised by taxation upon the people. It would only be justified in doing so if there was an expectation that as a consequence a purely indigenous industry would benefit. If it was an industry which might be considered non-national there would be no justification for taxing the people of the country.

*Lord Reading*: May I point out that in this country we have some organisations of that character where we pay subsidies. We do not make any distinction in the case of business which is carried on by persons who are outside this country. What we insist on is that the company or firm shall carry on its business in this country. By that we get a certain amount of employment and taxes are derived from it. That is how it is done. I do not know of any case where there is a distinction drawn between a company whose shareholders reside in this country and a foreign firm who may establish a business here.

*Mr. Jayakar*: We are seeking to have subsidies paid only to industries which may grow up in the country.

*Lord Reading*: So are we.

*Mr. Benthall*: May I point out to Mr. Sastri that my community are very large taxpayers in India, and will have to bear their full share of the burden?

*Mr. Jayakar*: In my opening speech I tried to make out a case for a class of industries which I called infant industries; that is, industries which are just struggling into existence and to which the Government might think it necessary to give some protective bounties. Why should it be wrong for the future Government of India to protect an infant Indian industry? I am not speaking of industries which are able to stand on their own legs, but of industries which have just come into existence. Why should not the future Government of India have the power to give some protection to such industries without giving the same to other industries, not on the ground that they are British, but on the ground that they are able to sustain themselves?

*Mr. Sastri*: Mr. Benthall has raised the point that the European community in India are taxpayers, and, therefore, come under the class which I intend to benefit. He is quite right; I do not deny that for one moment, but I wish the benefit of this to be extended to all who reside in India and become nationals of that country.

Mr. Benthall is speaking for those who reside in India and pay the ordinary taxes. If that is his object I have no objection, but the thing would apparently extend to all who, not residing in India and not forming a part of the population of India, would merely export their capital into India and benefit by this. I am thinking only of that.

*Lord Reading:* They would have to set up the industry in India in order to get the benefit of this, would not they? It could not be done simply by sending goods, or anything of that kind.

*Pandit M. M. Malaviya:* The match industry has already been set up in Bombay.

*Lord Reading:* I was dealing with Mr. Sastri's point. It is very much what happens here and is being discussed at this moment. For example, you may put protective duties on for a particular purpose, to protect a national industry, and the effect of it sometimes is that foreign countries come and set up their works here. We never interfere with that if they chose to do it, and come and take part in the national organisation and give employment and carry on their business here.

*Mr. Sastri:* I am thinking of bounties and special subsidies which are paid to struggling industries, and which certainly come out of the general taxes of the country. I am not thinking of the ordinary protective duties which England seems now to be adopting; I am thinking of another extension of this subsidising of industries.

*Lord Reading:* We do that also. There is the case of sugar-beet, and we do not raise any distinction about the companies.

*Chairman:* A fair field and no favour!

*Pandit M. M. Malaviya:* You do not produce much sugar yourselves.

*Lord Reading:* Oh, yes.

*Sir Akbar Hydari:* Perhaps I may say what our own practice has been in Hyderabad. It is that wherever we want to give any help from public funds we do lay down certain conditions, which are not based upon racial discrimination, but upon these facts—that a certain proportion of the directors shall be Hyderabadis and also a certain number of the shareholders. Having regard to the difficulties to which Lord Reading has referred, we say that a first refusal of a certain number of shares shall be given either to Hyderabadis or to the Hyderabad Government, but afterwards there are no further conditions.

*Lord Reading:* I do not oppose that for a moment.

*Chairman:* I agree with every word you have said.

*Sir Tej Bahadur Sapru:* The words here are "It should, however, also be made clear that bounties or subsidies, if offered." Does not that imply that it is entirely discretionary with the Government to offer or not to offer?



*Lord Reading*: It is, obviously.

*Sir Tej Bahadur Sapru*: The words are "if offered."

*Pandit M. M. Malaviya*: That is to say, if they offer to any industry; that is their option; but if they once offer to one industry, the question is, should it be made available to every member of that industry?

*Chairman*: That is too subtle for me; it beats me all the time.

*Lord Reading*: The Government must offer; it cannot help it.

*Chairman*: Very well; I think we understand the point.

*Sir Purshotamdas Thakurdas*: Do you mind changing the words in the third line? It says here "all who were willing to comply with the conditions prescribed," and I suggest we should say "all who were willing to comply with such conditions as may from time to time be prescribed by the Legislature." That is implied by the reply which I got to my last question. Otherwise this might seem to apply to the last three lines of paragraph 5, where reference is made to the External Capital Committee.

*Mr. Benthall*: You might say "in accordance with the paragraph above."

*Sir Purshotamdas Thakurdas*: The point is that the conditions should be such as may from time to time be prescribed by the Legislature.

*Mr. Benthall*: In accordance with the recommendations of the External Capital Committee.

*Sir Purshotamdas Thakurdas*: No. The reference to them is merely illustrative and not exclusive; that is what I want to make clear. Surely you do not want to restrict this to those conditions only? It should be open to the Legislature to lay down the conditions from time to time in accordance with what circumstances demand, provided they are not of a racial character, but you cannot tie the whole constitution down for ever to those recommendations only.

*Lord Reading*: But they are not tied down.

*Sir Purshotamdas Thakurdas*: I was replying to Mr. Benthall.

*Lord Reading*: The words simply are that they shall comply with the conditions prescribed in the Government's offer.

*Sir Purshotamdas Thakurdas*: There may be a misunderstanding; it may be thought that the "conditions" are the conditions laid down by the External Capital Committee in 1925. The Legislature, however, should have the right to vary these conditions from time to time.

*Mr. Jayakar*: Could not we say "would be available to all who were willing to comply with such conditions as may be prescribed?"

*Sir Purshotamdas Thakurdas*: No, "with such conditions as may be from time to time prescribed by the Legislature."

*Lord Reading*: I do not think we could have that. The Legislature might specify—we must assume it for the purpose of discussion—that there must be, say, one hundred per cent. directorate, one hundred per cent. of the shareholding Indian, and so forth. You could not possibly have that.

*Sir Purshotamdas Thakurdas*: It would be racial discrimination to say one hundred per cent. What I am trying to make out is whether it is the intention in drafting this to tie the whole thing down to the details laid down by the External Capital Committee. (Cries of “No.”) Then, if it is not, the Legislature should be completely free to vary them in accordance with the circumstances.

*Mr. Jayakar*: It may not be the Legislature; it may be the Department which will lay down the conditions.

*Sir Purshotamdas Thakurdas*: With bounties and subsidies I think it must be the Legislature.

*Pandit M. M. Malaviya*: It must be.

*Sir Purshotamdas Thakurdas*: I do not think it could be done by Departmental order. The Legislature must vote the money.

*Mr. Iyengar*: In the nature of things the Legislature should from time to time impose the conditions, because a subsidy should operate on a sliding scale on varying conditions so as to make it effective and so that it shall not be a burden on the taxpayer, and therefore the Legislature cannot be tied down to any definite conditions on which alone subsidies could be allowed.

*Mr. Benthall*: The External Capital Committee went into this matter at great length, and came to the conclusion that when bounties were given in this way a very limited amount of discrimination would be reasonable. They defined what they thought was reasonable, and we accepted it in my first speech.

*Sir Purshotamdas Thakurdas*: If it is clear, then I agree; but, unless it is clear, I am afraid I cannot possibly agree to this. You cannot tie this down to the terms suggested in 1925.

*Mr. Jayakar*: Your fear is that the words “conditions prescribed” may be taken to be the conditions prescribed in 1925, but if we were to say “such conditions as may be prescribed” that should solve the problem.

*Sir Purshotamdas Thakurdas*: But by whom? Presumably it will be by the Legislature. The money for the bounties and subsidies will be voted by the Legislature.

*Chairman*: I suppose, Sir Purshotamdas, they would go to the Federal Court if there was any dispute about it?

*Sir Purshotamdas Thakurdas*: That comes later.

*Chairman*: I know, I was only asking you.

*Sir Purshotamdas Thakurdas*: What is it, My Lord?

*Chairman*: It does not matter, thank you.

*Sir Samuel Hoare* : I think it is all right as it is, My Lord.

*Pandit M. M. Malaviya* : " Will be available to all who are willing to comply with such conditions as from time to time may be prescribed by the Legislature."

*Sir Purshotamdas Thakurdas* : Yes.

*Lord Reading* : No, I would never agree to that. I think that is introducing the very principle of discrimination which we want to prevent. It is giving the power to do it; I am not saying it is doing it, because the Legislature may never do it; but it is giving the power to do it. That is what I am trying to prevent.

*Sir Purshotamdas Thakurdas* : Your Lordship's intention is that it should be restricted by those conditions which were laid down by the External Capital Committee of 1925, which cannot be altered?

*Lord Reading* : No.

*Sir Purshotamdas Thakurdas* : May I understand what is meant by those words as put down by the draftsman?

*Lord Reading* : If you ask me, I should say the conditions prescribed by the offer of the bounties or subsidies, subject to this, that there should be no discrimination, except in so far as you might possibly imply it by the conditions of the External Capital Committee, which are obviously permitted.

*Sir Purshotamdas Thakurdas* : Are those the only conditions which Your Lordship is prepared to accept?

*Lord Reading* : No, I have said not. You may lay down certain conditions, as is done in this country. You may lay down conditions intended to cover those conditions which may be apprehended, and which may be other than those merely of the External Capital Committee; but those conditions could not be of a discriminatory character.

*Mr. Benthall* : Such as that the industry had to start at such and such a time in order to earn the bounty.

*Sir Purshotamdas Thakurdas* : We have agreed that they should not be conditions of a purely racial character. Once they have restricted it to that I do not think we would be prepared to accept any other restriction, My Lord. That is the whole point.

*Mr. Iyengar* : The whole point of Sir Purshotamdas' difficulty is what " the conditions " denotes—the conditions referred to here or the conditions referred to in the previous paragraph in the recommendations of the External Capital Committee. In the nature of things, as Lord Reading has pointed out, whenever a subsidy is offered by the Government through the Act of the Legislature, conditions will be prescribed there, and it is those conditions which are referred to.

*Lord Reading* : Yes.

*Mr. Iyengar* : So I strongly support Mr. Jayakar's suggestion to make clear such conditions as may be prescribed.

*Lord Reading*: I do not raise any objection to that; that is only a paraphrase.

*Chairman*: Yes—"such conditions as may be prescribed."

*Lord Reading*: Certainly, I do not raise any objection to that.

*Chairman*: Now paragraph 7 please.

*Mr. Gandhi*: It says: "With regard to method, it appears to the Committee." Will you add this; I have simply said: "save for the exception taken in paragraph 2."

*Chairman*: Certainly, Mahatma:—"save for the reservation in paragraph 2." I am much obliged to you. I ought to have done that. Now paragraph 7.

*Sir P. Thakurdas*: May I just enquire about line 8 in paragraph 6? There you use the words "usually under British management and financed with British capital." What are the implications of that?

*Chairman*: We must not tie ourselves down too much by definition. We are putting it rather vaguely.

*Lord Reading*: Surely that is only a recital; it is not an operative part.

*Mr. Iyengar*: It is a mere description.

*Sir P. Thakurdas*: All right, Sir.

*Chairman*: Now paragraph 7.

*Sir P. Thakurdas*: In paragraph 7, I see in the third line:—

"the constitution should contain a clause prohibiting legislative or administrative discrimination."

I wonder how it would be feasible to come to any decision about this? Later on I see the draft Report suggests that these matters might be referred to a Court of Law.

*Lord Reading*: I remember myself very distinctly that the words "Legislative or administrative discrimination" were used and as I understood the discussion it was accepted that no distinction could be drawn between legislative or administrative acts. Otherwise it might be within the power of the administration to make discrimination of all kinds.

*Sir Purshotamdas Thakurdas*: I know that I raised the question because I did not hear it in the course of the discussion this time. I want to know: if seven tenders were made and British and Indian firms tendered on equal terms, but an Indian tender was accepted, which was Rs. 5 higher than the British tender, would that be considered a just cause for a Court suit? Is there any precedent for anything like this in any constitution? It is most unusual, I submit, and I very emphatically differ.

*Chairman*: Very well, thank you very much. You differ. We will put down that one Member disagrees.

*Mr. Joshi*: I also disagree.

*Chairman* : Very well, we will say two Members disagree. Are there any comments on paragraphs 8, 9 and 10? If not, we will take paragraph 11.

*Mr. Joshi* : On paragraph 11, I should like to say that I think in certain circumstances it would be within the power of the Government or local bodies to take without compensation private property as a penalty for certain criminal offences or for public purposes. I should like to know what is contemplated.

*Chairman* : What is it you want? Is it the old law of attainder?

*Sir Tej Bahadur Sapru* : I would not agree to that.

*Chairman* : What do you suggest? Is it that if anybody, say, commits murder his property should be confiscated?

*Mr. Joshi* : In certain cases property is being confiscated to-day.

*Chairman* : For what?

*Mr. Gandhi* : Sedition. I can give you the instance.

*Mr. Joshi* : Yes, for sedition.

*Lord Reading* : Is it without compensation?

*Sir Tej Bahadur Sapru* : May I deal with this? I think the case that is being referred to is that of Mahendra Pratap Singh, Raja of Hathras. I know that case very well, because I had to deal with the matter in my professional capacity. It was found that he had joined the enemy during the war and therefore he was declared to be an enemy and his property was confiscated but it was regranted to his son.

*Chairman* : What do you want put in?

*Lord Reading* : Would it not do if you put in "Save under process of existing law."

*Mr. Joshi* : But the law may be changed later on.

*Chairman* : You cannot help the people of India changing their laws. You cannot have them like the laws of the Medes and Persians.

*Mr. Joshi* : There is a second point. It might be necessary to take property for public purposes. The owners of the property may have done nothing on account of road improvements made by the municipality or the government. There is no reason why property should not be taken in such a case without compensation. As a matter of fact in certain conditions it may be in the interests of the property-owners themselves that their property shall be taken without compensation.

Under certain conditions private roads are compulsorily taken over by municipalities without compensation, in the interests of the town itself. Certain owners of private roads, it may be, refuse to improve those roads and refuse to provide lighting, and therefore the municipality has to take them over without compensation. Under these conditions we must provide for certain occasions on

which property may be taken by statutory bodies without compensation.

*Chairman:* What I feel about this, Mr. Joshi, is that I should very much like to leave something for you to do when you are a member of the Federal Government of India. You can then propose an amendment to this effect.

*Mr. Joshi:* But if you make this a fundamental right, every law that is proposed will be declared to be void.

*Chairman:* We cannot have that, no.

*Sir Akbar Hydari:* I have been asked to make it clear that so far as this fundamental right is concerned, that no one should be deprived of his property save by judicial tribunal, that this may interfere to a certain extent with the rights of Indian States.

*Chairman:* You are quite right. I will see that something is put in.

*Mr. Benthall:* I should like to pay a tribute to the great courtesy which we have received throughout our negotiations with my Indian colleagues, and to the many constructive suggestions which they have made.

*Chairman:* I am sure we all agree with that. Thank you very much.

*Mr. Joshi:* May I ask one question? What about the position of Labour legislation as a Federal subject?

*Chairman:* Well, that is a very proper question. We had better take that to-morrow.

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(The Committee adjourned at 1-45 p.m.)

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PROCEEDINGS OF THE FIFTY-THIRD MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON FRIDAY, 27TH NOVEMBER, 1931, AT 3-0 P.M.

*Consideration of the Draft Fourth Report on Financial Safeguards.*

*Chairman:* With the leave of the Committee, I will do as we always do. In accordance with our practice, I will read through the whole of the Report and then come back and invite you to make any comments you desire to make on each one of the paragraphs.

(The Chairman here read paragraphs of the Draft Fourth Report dealing with Financial Safeguards.)\*

1. In paragraph 11 of their Second Report the Committee in recording the general agreement, to which reference has been made in an earlier paragraph of this Report, that the

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\* These paragraphs, as amended in consequence of the ensuing discussion, are printed as paragraphs 13-15 of the Fourth Report of the Federal Structure Committee. (See pages 1267 to 1269.)

assumption by India of all the powers and responsibility which have hitherto rested on Parliament cannot be made at one step, recorded the consequential opinion that, during a period of transition in certain situations which may arise outside the sphere of the reserved subjects, the Governor-General must be at liberty to act on his own responsibility, and must be given the powers necessary to implement his decision. And in paragraphs 14 and 18 to 20 of the same Report, they then proceeded to indicate in some detail their view of those situations in the financial sphere for which such special provision would be necessary. Their proposals in this connection were based upon the following fundamental propositions:—

(1) That it is essential that the financial stability and credit of India should be maintained;

(2) That the financial credit of any country rests in the last resort upon the confidence of the investor, actual and potential;

(3) That one result of the connection which has subsisted between India and the United Kingdom has been that her credit in the money markets of the world has hitherto been in practice closely bound up with British credit; and

(4) That a change in her constitutional relations with the United Kingdom which involved a sudden severance of the financial link between the United Kingdom and India would disturb confidence and so place the new Indian Government and Legislature at a grave disadvantage.

2. The proposals designed to avert such a situation have been further discussed at the Committee's present session. While some members consider that in present circumstances the proposals in paragraphs 18 to 20 of the Second Report may not prove sufficient, others have advanced the view that they erred on the side of caution, and that since there was no ground for postulating imprudence on the part of the responsible Executive and Legislature of the future nothing further was required in order to ensure financial stability, in addition to the normal powers of veto which would vest in the Governor-General, than the establishment, pending the creation of a Reserve Bank, of a Statutory Advisory Council, so constituted as to reflect the best financial opinion of both India and London, which would be charged with the duty of examining and advising upon financial and monetary policy. It was, however, suggested by those who held such views that it might be advisable to provide that in the event of the rejection by the Legislature of the Government's proposals for the raising of revenue in any given year, the provision made for the last financial year should continue automatically to be operative. Some members again, who had not participated in the Committee's earlier discussions, went

further in their objection to the financial safeguards, and expressed themselves as unwilling to contemplate any limitations upon the powers of an Indian Finance Minister to administer his charge in full responsibility to the Legislature, on the ground that a constitution which did not concede complete control of finance to the Legislature could not be described as responsible government.

3. The majority of the Committee adhere to the principles enunciated in their previous Report. They feel strongly that if the attitude of caution with which they approached this question last January was justified—as they are convinced by the considerations stated in paragraph 1 of this Report that it was—the financial crisis which has since overwhelmed both the United Kingdom and India in common with so many other countries has still further reinforced its necessity. They feel further that in the conditions of complete, uncertainty and instability now so widely prevailing, it would serve no useful practical purpose here and now meticulously to examine, or to attempt to decide upon, the precise means to adopt to ensure and command confidence in the stability of the new order, and a safe transition to it from the old. The majority of the Committee therefore record it as their view that the conclusions reached in the Committee's Second Report form an appropriate basis for approach to the task of framing the constitutional definitions of the powers and interplay in the sphere of finance of the various elements which will compose the Federal Authority which they envisage, and that it would be premature at this stage to attempt to elaborate the application of these conclusions. While they are prepared to explore more fully the suggestion of an Advisory Finance Council, they cannot on the basis of the discussion that has taken place commit themselves to the view that such a Council would adequately secure the effective maintenance of confidence in the credit of India, which must be the essential test of the measures necessary in the sphere of finance.

*Chairman:* Now if you will kindly go back to the first page, paragraph 1, does anybody want to make any criticism on paragraph 1?

*Pandit M. M. Malaviya:* In sub-paragraph (2) you say:

“That the financial credit of any country rests in the last resort upon the confidence of the investor, actual and potential.”

Are those words actually essential?

*Chairman:* What it means is the investor or people who may become investors. Supposing I am not an investor in India, I might still be a man who perhaps wanted to invest in India and so I should be a potential investor.



*Pandit M. M. Malaviya*: Then the potential investor may be not merely an English investor, but other people too?

*Sir Samuel Hoare*: That is just what it means.

*Chairman*: Yes, that is what it means.

*Pandit M. M. Malaviya*: It means both actual and potential. Is it essential to keep those words?

*Chairman*: It is almost an Irishism as we call it. A man is not an investor, but he may be an investor. It sounds funny to put it in that way, but it is intended to cover people who actually have invested money, and therefore we want to retain their confidence, and people who, at some future date, may become investors. If there is nothing else on this paragraph, will you turn over the page and we will come to paragraph 2?

*Sir Purshotamdas Thakurdas*: May I ask whether the members who were present last time agreed with sub-paragraph (4) of paragraph 1?

*Chairman*: You mean whether the people who were parties to the last Report will also be parties to sub-paragraph (4)?

*Sir Purshotamdas Thakurdas*: Whether they think this is a correct inference from their Report?

*Chairman*: Let us read it again.

“ And that a change in her financial relations with the United Kingdom which involved a sudden severance—”

those are the words, “ sudden severance ”—

“ of the financial link between the United Kingdom and India would disturb confidence and so place the new Indian Government and Legislature at a grave disadvantage.”

I should think most of us—all of us, I should think—would agree to that word “ sudden.”

*Sir Purshotamdas Thakurdas*: But then the question arises whether what they suggested is sudden.

*Chairman*: Yes, but all they are committed to here is this statement—

“ that a change in her constitutional relations with the United Kingdom, which involved a sudden severance of the financial link between the United Kingdom and India, would disturb confidence.”

*Sir Purshotamdas Thakurdas*: My point is that the change we indicated in the last Report could by no means be said to be a sudden severance of the financial link. Therefore, that phrase as I read it is rather a far fetched inference to make from that Report. However, it is not for me, as I was not a party to the Report, to say what it meant. I am only enquiring whether those who were parties to that Report agree with the inference.

*Pandit M. M. Malaviya*: I think it is objectionable to put this paragraph in.

*Sir Purshotamdas Thakurdas* : If I may say so, it is not for us who were not present last time to criticise. It is for those who were present to say.

*Chairman* : Sir Tej Bahadur Sapru, do you object?

*Sir Tej Bahadur Sapru* : I see no objection to it. The paragraph says:—

“ And that a change in her constitutional relations with the United Kingdom, which involved a sudden severance of the financial link between the United Kingdom and India would disturb confidence and so place the new Indian Government and Legislature at a grave disadvantage.”

The word “ sudden,” in my opinion, has reference to the temporary, or shall we say, transitional changes we contemplated at that time. It is quite a different question whether we shall have transitional changes, but once you accept transitional changes the word “ sudden ” is true.

*Pandit M. M. Malaviya* : That proposition, as I understand it, is now formulated for the first time. It is not reproduced from what was said last year. Am I right in saying that?

*Chairman* : It is not a question in which you are involved at all.

*Pandit M. M. Malaviya* : If this is formulated for the first time in these words, I suggest it is not justified. It says:—

“ And that a change in her constitutional relations with the United Kingdom, which involved a sudden severance of the financial link between the United Kingdom and India, would disturb confidence and so place the new Indian Government and Legislature at a grave disadvantage.”

A sudden severance of the financial link can only mean exercise by the Secretary of State of the authority he possesses over the Indian Government in matters financial. I do not think in the discussions which have proceeded it has been agreed that that control shall continue to be exercised.

Other arrangements have been considered in order to create confidence during the period of transition, but these do not necessarily imply the continuance of the financial link by the exercise of the financial powers of the Secretary of State. The only financial link which connects England with India officially is the Secretary of State.

*Mr. Iyengar* : I would suggest that instead of the word “ link ” in this paragraph the word “ relations ” should be used.

*Chairman* : Sir Tej Bahadur Sapru is satisfied with this wording. I think we had better leave it.

*Sir Tej Bahadur Sapru* : I should like to add one word arising out of the remarks by Pandit Malaviya. He seems to think that those who agreed with the substance of the proposition last year contemplated the continued control of the Secretary of State. I do not interpret this as assuming anything of the kind. But apart

from the control of the Secretary of State, there are other financial links, and I believe the word "sudden" in this paragraph is used to denote the period of transition. We are satisfied that there would be a Reserve Bank, and we should have to make some provision for that purpose.

*Mr. Benthall*: Can we not make the word "links," in the plural?

*Chairman*: I accept Sir Tej Bahadur Sapru's interpretation. It is certainly what we meant.

*Sir Purshotamdas Thakurdas*: If the plural is to be used, I beg to submit that it is not being contended by the other side that we are disturbing more than one link. It is not suggested that any other link may be touched. Therefore the plural would not be applicable at all. The link is the Secretary of State's control. There is only one link. What is the other link Sir Tej Bahadur Sapru has in mind?

*Sir Tej Bahadur Sapru*: Well, the relations between the two countries. I certainly did not mean by the financial link the link of the Secretary of State.

*Sir Purshotamdas Thakurdas*: I do not know whether it would be agreed that that is not intended.

*Pandit M. M. Malaviya*: May we know what the financial link indicates in this paragraph if it does not indicate the control which the Secretary of State exercises over the Government of India?

*Chairman*: You have heard what Sir Tej Bahadur Sapru says. I cannot put it better than that. We are now stating what those gentlemen who were here on the last occasion put forward.

*Pandit M. M. Malaviya*: Sir Tej Bahadur Sapru has said that it does not mean the continuation of the financial powers of the Secretary of State. Is that accepted by the Secretary of State?

*Sir Samuel Hoare*: To me it is a general term. I do not want to define what it is. I think it is much better to leave it general like this. It is stating the fact which was the very basis of our discussions last year. If it had not been for this fact that a sudden severance of the link, whatever that link might be, would shake India's credit, there would have been no discussion of safeguards, and I imagine that a good many of the gentlemen who agreed to safeguards last year would not have agreed to them.

*Sir Purshotamdas Thakurdas*: The difficulty is this, that we who are parties to this Report, before we give our assent to it, must understand what each word and phrase carries.

*Sir Samuel Hoare*: I would not admit that at all in a sentence of this kind. It is merely a historical fact of what took place last year.

*Sir Purshotamdas Thakurdas*: And it is just that historical fact that I do not agree with.

*Sir Samuel Hoare*: You may not agree with it but it was the fact as it emerged last year. Historically speaking, I think this accurately describes one of the results of our discussions last year.

*Sir Purshotamdas Thakurdas*: Sir Tej Bahadur Sapru does not inform us that that was his intention, by any means.

*Lord Reading*: Would not it meet the situation if you make it in the plural and say "links" instead of "link"?

*Pandit M. M. Malaviya*: That would make it worse, because at present we are trying to cut only one link.

*Mr. Jayakar*: I suggest if there is the slightest chance of these words "financial link" being misconstrued it will be better to put the words "financial relations."

*Pandit M. M. Malaviya*: We are providing safeguards which will satisfy British interests, and no other interest will suffer. All the discussions we have had have been to ensure that there shall be no want of confidence by disturbance of other relations. As this stands, my objection to it is that it puts forward a proposition which is not correct and which will not fit in with what we have been discussing. We have been discussing safeguards which should be agreed upon. This statement, "a sudden severance of the financial link between the United Kingdom and India would disturb confidence," cannot mean anything except the relationship which the Secretary of State has to the Government of India, and to say that the sudden severance of that link will disturb the confidence and so place the new Indian Government at a great disadvantage is to go against the propositions which have been agreed upon.

*Chairman*: I do not quite follow that. If you would be good enough to look at the beginning of it again, it is their proposal in this connection.

*Pandit M. M. Malaviya*: That is why I asked whether this was the language that was formulated last year. It is not so. This has been formulated for the first time this year, and as it has been formulated for the first time this year, I request that the language used should be such as can be agreed upon and which should seem to us who are here now exactly to express what was decided upon last year.

*Lord Reading*: Is not the true position here that we are merely stating what were the fundamental propositions upon which the Report of last year was based? And that is surely a matter on which those who were present are best able to speak.

*Pandit M. M. Malaviya*: Those discussions are recorded, and this goes beyond them.

*Lord Reading*: It really does not. It states what the proposition is based upon.

*Pandit M. M. Malaviya*: Suppose it is decided that the control which the Secretary of State at present exercises over the Government of India should be exercised hereafter in India by such

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*Lord Reading*: It really does not. It states what the proposition is based upon.

*Pandit M. M. Malaviya*: Suppose it is decided that the control which the Secretary of State at present exercises over the Government of India should be exercised hereafter in India by such

arrangement as Your Lordship, for instance, has already contemplated, of the establishment of a Reserve Bank, and by another arrangement such as is in contemplation of a Financial Advisory Board, then I submit the link which connects England through the Secretary of State with India at present would be severed.

*Lord Reading:* This does not touch that. This statement does not affect anything you have said.

*Chairman:* I think we could all get agreed upon this by the insertion of a couple of words. The Pandit Malaviya is of this opinion; he says: "On the last occasion the Committee came to certain recommendations or certain views and you want to state them." But you have not stated them properly because I do not think, from what I know or from what I have heard, that the proposals of the Committee on the last occasion were based upon these fundamental provisions, and so I think what I shall put in now is this:—

"Their proposals in this connection were based by some of them"—

that is by some of the members of the Committee—

"upon the following fundamental propositions."

Certainly mine were; that includes me. And then you will be able to say: "Well, you were foolish enough, Lord Chancellor, to base your proposals upon those fundamental propositions, but other people did not;" and that will meet your point. It will read:—

"The proposals"—not "their proposals"—"the proposals in this connection were based by some of the members upon the following fundamental propositions."

*Pandit M. M. Malaviya:* Would Your Lordship say: "In view of some of the Committee," or "In the opinion of some members of the Committee"?

*Chairman:* Yes, I can say that. Where do you want that to come in?

"The proposals in this connection were based in the opinion of some members of the Committee upon the following propositions."

*Pandit M. M. Malaviya:* Yes.

*Chairman:* Very well, I will accept that.

*Pandit M. M. Malaviya:* Will you also kindly put in in some place an expression to show that some of us do not agree that this is a correct view of what took place last year?

*Chairman:* No, I will not put that in.

*Lord Reading:* How can those who were not present express a view as to that?

*Chairman:* How can you express that view?

*Pandit M. M. Malaviya:* From the records.

*Chairman* : I cannot do that. You can point that out later on. I really have met you very very fairly, if you will permit me to say so. Now paragraph 2.

*Sir Purshotamdas Thakurdas* : My Lord, regarding paragraph 2, I see the words " Reserve Bank " occur in this for the first time and perhaps the only time. May I ask whether it is proposed to say anything regarding how the Reserve Bank can be started whenever it is possible to start it, and by legislation where? That is a point, Your Lordship will remember that I specifically referred to, and I do think it is important for us to know whether this Committee is going to express any opinion on that score or not.

*Chairman* : Well, what would you like put in?

*Sir Purshotamdas Thakurdas* : My personal opinion is that it should be started by a Statute in the Legislative Assembly.

*Sir Tej Bahadur Sapru* : Will you have : " by the creation by the Indian Legislature of a Reserve bank " ?

*Sir Purshotamdas Thakurdas* : I will be quite satisfied with that, Sir.

*Mr. Sastri* : I see Lord Reading indicating dissent.

*Chairman* : I think I will accept that.

*Sir Tej Bahadur Sapru* : " Pending the creation by the Indian Legislature."

*Chairman* : Yes : " Pending the creation by the Indian Legislature." Will that meet you, Sir Purshotamdas?

*Sir Purshotamdas Thakurdas* : Yes; that is what I think myself, Sir. Thank you.

*Sir Akbar Hydari* : " Indian Federal Legislature ", Sir?

*Sir Purshotamdas Thakurdas* : Of course. It will certainly not be by any of the Provincial Legislatures. It will have to be Federal or Central. Of course, Federal.

*Sir Akbar Hydari* : Federal.

*Chairman* : Well, I will put in " Federal."

*Sir Purshotamdas Thakurdas* : Certainly, Sir : " by the Indian Federal Legislature."

*Mr. Benthall* : It might be done before the commencement of federation.

*Lord Reading* : How can it?

*Sir Purshotamdas Thakurdas* : There will be no Federal Legislature then.

*Mr. Benthall* : The Reserve Bank might be started next year if conditions improve.

*Sir Samuel Hoare* : I think there is something in Mr. Benthall's point. It is unlikely in the present state of the world. I mean



everybody wants to start the Reserve Bank as soon as possible. There is no doubt about that.

*Mr. Iyengar*: I think Mr. Benthall has in view the prospect that you may not have a federation for some years.

*Mr. Benthall*: That is possible, yes.

*Mr. Iyengar*: And therefore he wants to make sure that whether the federation comes or not the Reserve Bank shall come.

*Chairman*: There is nothing to prevent anybody doing anything. It is only dealing with after federation.

*Mr. Benthall*: No, but I would leave out the word "Federal" and make it "Indian."

*Mr. Jayakar*: It leaves it possible for both countries.

*Lord Reading*: I think Indian Legislature is as good as the other.

*Chairman*: Then we will leave out "Federal" and put in "by the Indian Legislature." Now on the next page please, paragraph 3.

*Pandit M. M. Malaviya*: I want to say a few words about paragraph 2 yet. May I?

*Chairman*: Yes, please.

*Pandit M. M. Malaviya*: The paragraph speaks of the creation "of a Statutory Advisory Council, so constituted as to reflect the best financial opinion of both India and London, which would be charged with the duty of examining and advising on financial and monetary policy." I thought the proposal put forward by Sir Tej Saprú was that there should be an Advisory Council on matters of currency and exchange.

*Sir Tej Bahadur Saprú*: That is so.

*Pandit M. M. Malaviya*: Therefore I suggest it should be so stated. The paragraph should read "charged with the duty of examining and advising upon questions of currency and exchange."

*Sir Samuel Hoare*: Financial and monetary policy means that.

*Chairman*: That is what it means.

*Lord Reading*: If he wants to limit it, I do not see any objection, but you are giving them something wider.

*Chairman*: Well, Pandit Malaviya, I will accept your words but, if you will forgive me saying so, they are against your own interests. I accept them, but I think it is not wise of you.

*Pandit M. M. Malaviya*: Are you omitting the word "financial"?

*Chairman*: I accept what you suggest, but they are limiting words. I advise you to keep in the words in the paragraph which do not limit but you can have whichever you like. I accept the words you suggest, but they are words which militate against your

own interests. We will make the paragraph read "charged with the duty of examining and advising on currency and exchange."

*Pandit M. M. Malaviya*: I asked, is it to advise on financial policy generally? I thought it was limited to currency and exchange. I have no objection to the words "monetary policy" being retained, but I object to the word "financial."

*Chairman*: I accept it and I will cross out the word "financial" and leave it at "monetary policy." The day will come, I am afraid, when you will regret it, but that is not my fault. Paragraph 3, please.

*Sir Purshotamdas Thakurdas*: I took it when the question of this Statutory Advisory Council was being discussed that it was only to go on until a Reserve Bank comes into being.

*Chairman*: I see what you mean.

*Sir Purshotamdas Thakurdas*: It may be kept on afterwards if found useful, but it need not. It would be only for the period before the Reserve Bank comes into existence.

*Mr. Jayakar*: The words in the paragraph are "pending the creation of a Reserve Bank."

*Sir Purshotamdas Thakurdas*: Does that mean with the creation of a Reserve Bank it would go out?

*Mr. Jayakar*: Of course.

*Sir Purshotamdas Thakurdas*: I do not know.

*Mr. Benthall*: I should have liked to say a good deal more if we were going into detail, but I think it better to leave it as vague as possible.

*Chairman*: Will it meet your views if I put on record that in the opinion of some members of the Committee it should come out? I will do that.

*Sir Purshotamdas Thakurdas*: It may not be necessary to have it afterwards.

*Chairman*.: Very well, we will put it in in this form: "Some of the members are of opinion that it will not be necessary to have this Advisory Council after the Reserve Bank comes into existence." In what part of the paragraph would you like that inserted?

*Sir Purshotamdas Thakurdas*: After the words "monetary policy." I would further suggest, Sir, that it should be stated that the Statutory Railway Board will be set up only by legislation in the Indian Legislature.

*Chairman*: That has not yet been discussed. It is a matter we shall have to leave for future decision. I agree that it is an important thing, but we have not discussed it.

*Sir Purshotamdas Thakurdas*: I thought that no one had criticised what I had said on the point.

*Sir Tej Bahadur Sapru*: There was no unanimous decision on that point on the last occasion.

*Sir Purshotamdas Thakurdas* : I feel that some expression of opinion ought to go out from this Committee on the question.

*Sir Tej Bahadur Sapru* : There is no mention of a Statutory body whatever.

*Mr. Joshi* : The Statutory Board should be created by the constitution itself.

*Sir Tej Bahadur Sapru* : There is nothing in the Report about it.

*Sardar Ujjal Singh* : As a matter of fact, I pointed out that if a Statutory Authority was going to be established it should be left to the Indian Legislature.

*Sir Purshotamdas Thakurdas* : May I read from the second Report of the Federal Structure sub-Committee presented at the meeting of the Conference on January 15th? I quote from paragraph 19: " In this connection the sub-Committee take note of the proposal that a Statutory Railway Authority should be established, and are of opinion that this should be done, if after expert examination this course seems desirable."

*Sir Tej Bahadur Sapru* : The Report of the Plenary Session shows that we all objected to the Statutory Authority being created at all.

*Sir Purshotamdas Thakurdas* : May I take it that this present Report is not being conformed to the one I have just quoted?

*Sir Tej Bahadur Sapru* : Of course not.

*Sir Purshotamdas Thakurdas* : I thought earlier we were confirming this Report. I am quite satisfied.

*Chairman* : Mr. Gandhi has something that he wants to add at the end of paragraph 2.

*Mr. Gandhi* : I wish to add at the end of paragraph 2, after the words " responsible government " the words, " and that the derogation from complete control would hamper the Finance Minister in the discharge of his duty."

*Chairman* : Those words are noted.

Now we come to paragraph 3, please.

*Sir Purshotamdas Thakurdas* : In the first sentence of paragraph 3 you have this: " The majority of the Committee adhere to the principles enunciated in their previous Report." In view of the discussion I raised on sub-paragraph 4 of paragraph 1, I am afraid I cannot be one of the majority who adhere to those principles.

*Chairman* : If you will kindly look at the sentence a moment: " The majority of the Committee adhere to the principles enunciated in their previous Report;" it was not your Report at all, but I will make it clear that it does not apply to you. It was not meant to apply to you.

*Sir Purshotamdas Thakurdas* : Then " The majority of the Committee " there means the majority of the Committee present at the last time?

*Chairman* : Yes, not you.

Then going on, is there anything more on paragraph 3?

Now turn over to page 4.

Subject to those alterations which you have been good enough to indicate and which I have adopted. I will sign the Report on behalf of the Committee.

Now, Mr. Joshi, please.

*Mr. Joshi* : I should like to know what sort of proposal you propose to make on the question as to the power of the Federal Legislature and the Federal Government to legislate on Labour questions affecting the whole of India.

*Chairman* : I think what I propose to say, subject to your agreeing to it, is this. Mr. Joshi's point is of great importance. A solution of the difficulties to which he has drawn our attention will have to be found when the precise relationship between the legislative powers of the Federal and Provincial Legislatures is finally determined. In this particular matter there has not been an opportunity this Session to advance further than the general conclusions reached at the last Session and we cannot therefore report on the details of it, but further consideration will have to be given to it. Will that meet your wishes and views?

*Mr. Joshi* : Yes.

*Chairman* : Thank you very much. Then what I will do is this. That must appear somewhere, and I think it had better be appended in its proper place in the Report on the Legislatures. That, I think, would meet your views.

*Mr. Sastri* : Lord Chancellor, are we now winding up this Federal Structure Committee?

*Chairman* : I am afraid so; I am very sorry; I should have liked to have gone on.

*Mr. Sastri* : If so, will you allow me, as one who has been faithful in attendance in this Committee and one who, I hope, has also been equally faithful in allegiance to this Committee and its work, to say a few words to express our feelings of complete confidence in you as our Chairman.

*Chairman* : Thank you very much, Mr. Sastri.

*Mr. Sastri* : My Lord, words fail me to convey this vote of thanks. It is a vote in which our hearts are all deeply engaged. We remember the extraordinary courtesy and patience with which you permitted us to wander over a range which, already wide in itself, was I fear not wide enough for the purposes of the discussion of some among us.

*Chairman* : Quite right.

*Mr. Sastri* : You gave us a free hand, and, if I may say so, in allowing us to revel in our freedom you have possibly contributed to the efficiency of this Committee's work. Moreover, Sir, there is

just one word which I would like to say at the end of our sittings, and in this I hope I carry the judgment and the wishes of every single member of this Committee. Our Committee's work has been of the utmost importance to the mission which has brought us all to this country. It has in India and in England aroused the greatest possible attention. It is quite likely that in much that we said and in much that we did we have made errors of judgment. It is quite likely that in much of the work that we have actually done we have not succeeded in carrying the judgment and the wishes of either the people in India or the people in this country; but amongst ourselves, although there were sometimes differences of a sharp kind between one section and another, there has prevailed a most wonderful spirit of cordiality, a spirit of give-and-take upon all sides, British and Indian, Indian States and British India, Labour and non-Labour. Upon all sides there has been an admirable spirit and a willingness that the labours of this Committee and, therefore, the labours of the Conference, should reach a successful and happy issue. That dominant feature of the proceedings of this Committee has been in large measure secured, I believe, by the absolute impartiality and by the rulings of our Chairman, by the way in which when we sometimes fell from the high standard which he would have set, he continually reminded us that in our speeches and in our deliberations we must not fix our eyes upon the little part of India and Indian policy to which we belong, but upon that future united and integral India which we are all trying to build up. That ideal the Lord Chancellor never allowed to fade from his own mind or from the mind of any one of us. For that act as well as for others we stand deeply indebted to you and we believe that if ever we are engaged upon a task of equal difficulty and complexity we could never wish ourselves greater good fortune than to have a Chairman of your type and your character.

*Chairman:* Thank you very much.

*Sir Tej Bahadur Sapru:* My Lord Chancellor, will you permit me to say one or two words following the very warm tribute which has been paid to you as Chairman of this Committee by my friend Mr. Sastri? I cannot add many words. I will only venture to say this much, that whatever the future is going to be and whatever the result is going to be of our labours here, everyone of us will agree that we owe to you a deep debt of gratitude for the manner in which you have conducted our proceedings this year as well as last year. It has been a genuine pleasure to have worked with you and for many of us it will be a very pleasant memory when we have gone back from your delightful country. I would only venture in the tribute that has been paid to Your Lordship to associate the members of the staff and your advisers who have borne the brunt of the day. The outside world judges the work of this Conference by the amount of oratory that has flowed round this table, but the outside world does not know what amount of thought and labour has been put into the various decisions that has been arrived at and the amount of labour involved in the Reports that have been pre-

pared and prepared so skilfully and with so much rapidity. I would like, therefore, to express a genuine sense of admiration for the manner in which they have worked with you.

*Mr. Jinnah:* My Lord Chancellor, I should like to endorse every word that has been said by the Right Honourable Mr. Sastri and Sir Tej Bahadur Sapru. May I add one word more? It is this. I think we fully expected you, Sir, to discharge your duties impartially, justly and fearlessly, but what you have done is not merely what was expected of you. You have made us all feel that you have discharged your duty in that direction. It is one thing for the Chairman to be impartial, but it is another thing to make every member of the Committee feel that you have acted up to those principles. You have upheld our rights and our privileges as members of this Committee in a manner which I say no other Chairman could possibly have done, in spite of all the trying situations that have arisen from time to time. I wholeheartedly congratulate you that you have won the heart of every member of this Committee. What may be the result of the work of this Committee is another matter but you have discharged your duty magnificently.

*Chairman:* Thank you very much, Mr. Jinnah.

*H.H. The Nawab of Bhopal:* We of the Indian States wish to associate ourselves with every word that has just been said, and we all join most sincerely in the vote of thanks that has been moved to you, Lord Chancellor, and with the tribute that has been paid to members of the staff.

*Mrs. Subbarayan:* I entirely associate myself with the warm tribute paid by Mr. Sastri and Sir Tej Bahadur Sapru and others. As a new member, a lay member, and a minority of one, I found that your kindness and encouragement mitigated my terrors on entering an assembly of experts. Our deliberations have been carried on in an atmosphere of genuine friendliness and sympathy which have radiated from the Chair upon the Committee, and I am sure we are all very grateful to you for all your kindness.

*Chairman:* Your Highnesses, My Lords, Ladies and Gentlemen, I am very touched—no one could help being touched—by your very kind expressions of opinion, and the cordial way in which all of you have received the too kind remarks made by the various speakers. But I should first of all like to say how much I have been helped in my labours by the distinguished civil servants who have been here in daily attendance. I do not think it is any secret—if it is a secret, it shall no longer be one—that since you left these shores on the last occasion I have been presiding over a committee of civil servants, seven or eight in number, who have been discussing all the questions that we have discussed here. We have often met as many as four times a week, and our meetings are to be counted not by the dozen but by the score, and memoranda have been produced which are of the greatest possible assistance to us all. I desire that those civil servants should have the chief share in any praise that may be mentioned.

As for myself, although the task may be a difficult one, especially when I have had to hurry you up, as happened this week, it has been an exceedingly pleasant one, and I want to say this, first, last and all the time, I am in favour of a Federal India. I am not going to desert you, and I am going to take good care that nobody does desert you, and I do not think anybody desires to do so. In my view a Federal India is not only possible, I think a Federal India is probable. And the sooner we can satisfy your aspirations the better for everybody. I am not going to say goodbye. I hope I shall meet you again somewhere, some day, and I hope at any rate that I shall be one of the first to be able to congratulate India upon having achieved what I know to be its ambition, and what I know will bring it peace and prosperity at the last. I thank you.

*(The Committee adjourned at 4-5 p.m.)*

## FOURTH REPORT OF FEDERAL STRUCTURE COMMITTEE.

1. The Committee, when discussing the subjects covered by this Report, *viz.*, Defence, External Relations, Financial Safeguards and Commercial Discrimination, did not have the advantage of hearing the views of the Muslim members of the British Indian Delegation who reserved their opinion on such questions until such time as a satisfactory solution had been found of the problems which confronted the Minorities Committee. Some other representatives of minorities similarly reserved their opinion.

### DEFENCE.

2. Our consideration of the question of Defence in its constitutional aspect is based on the principle enunciated in the Defence sub-Committee at the last Session that "The Defence of India must, to an increasing extent, be the concern of the Indian people, and not of the British Government alone."

3. The view was strongly put forward by some members that no true responsibility for its own government will be conferred on India unless the subject of Defence (involving, of course, the control of the Army in India, including that of the British troops) is immediately placed in the hands of an Indian Ministry responsible to an Indian Legislature, with any safeguards that can be shown to be necessary.

4. The majority of the Committee are unable to share this view. They consider that it is impossible to vest in an Indian Legislature during the period of transition the constitutional responsibility for controlling Defence, so long as the burden of actual responsibility cannot be simultaneously transferred.

5. The majority of the Committee therefore reaffirm the conclusion reached in the Committee at the last Session that "the assumption by India of all the powers and responsibility which have hitherto rested on Parliament cannot be made at one step and that, during a period of transition, the Governor-General shall be responsible for Defence,"\* being assisted by a "Minister" of his own choice responsible to him and not to the Legislature.

6. At the same time there is no disagreement with the view that the Indian Legislature must be deeply concerned with many aspects of Defence. It is undeniable that there can be no diminution of such opportunities as the present Legislature possesses of discussing and through discussion of influencing Defence administration. While the size, composition and cost of the Army are matters essentially for those on whom the responsibility rests and their expert advisers, yet they are not questions on which there

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\* See paragraph 11 of the Second Report of the Federal Structure sub-Committee.



can be no voicing of public opinion through constitutional channels. The Legislature would thus continue to be brought into the counsels of the Administration in the discussion of such outstanding problems as the carrying out of the policy of Indianisation. Further, there must be correlation of military and civil administration where the two spheres, as must sometimes inevitably be the case, are found to overlap. In the latter connection the suggestion was made that a body should be set up in India analogous to the Committee of Imperial Defence in Great Britain. Some members of the Committee considered that even though responsibility for the administration of the Army might remain, during a period of transition, with the Governor-General, the final voice on such questions as the size, composition and cost of the Army should rest with the Legislature.

7. To secure the measure of participation contemplated under paragraph 6 by the majority of the Committee, various suggestions were made, the cardinal feature of which, in almost all instances, was the precise position to be assigned to the "Minister" appointed by the Governor-General to take charge of the Defence portfolio. It was assumed that his functions would roughly correspond to those of the Secretary of State for War in the United Kingdom. Among the more important proposals made were the following:—

(i) The "Minister," while primarily responsible to the Governor-General, should, as regards certain aspects only of Defence, be responsible to the Legislature.

(ii) The "Minister," though responsible to the Governor-General, should be an Indian; and he might be chosen from among the Members of the Legislature.

(iii) The "Minister," of the character contemplated in (ii), should be considered to be a Member of the "responsible" Ministry, participating in all their discussions, enjoying joint responsibility with them, and in the event of a defeat in Legislature over a question not relating to the Army should resign with them though, of course, remaining eligible for immediate re-appointment by the Governor-General.

8. While some of these suggestions contain the germs of possible lines of development, it is impossible to escape from the conclusion (a) that, so long as the Governor-General is responsible for Defence, the constitution must provide that the Defence "Minister" should be appointed at the unfettered discretion of the Governor-General and should be responsible to him alone, and (b) that this "Minister's" relations with the rest of the Ministry and with the Legislature must be left to the evolution of political usage within the framework of the constitution.

9. The view was put forward that, while supply for the defence services should not be subject to the annual vote of the Legislature, agreement should be sought at the outset on a basic figure for such

expenditure for a period of, say, five years, subject to joint review by the Legislature and representatives of the Crown at the end of such period, with special powers in the Governor-General to incur expenditure in cases of emergencies. The details of any such plan should receive further careful examination.

#### EXTERNAL RELATIONS.

10. Very similar considerations to those governing the constitutional treatment of Defence apply in the case of the subject of External Relations, and in general the views expressed by members of the Committee on this subject followed closely their opinions regarding the constitutional provisions in relation to Defence. In particular the majority of the Committee reaffirm the view taken in the Second Report of the sub-Committee (paragraph 11) that the Governor-General should be responsible for External Relations.

11. There is, however, a difficulty in connection with External Relations which hardly arises in the case of Defence, *viz.*, that of defining the content of the subject. The reserved subject of External Relations would be confined primarily to the subject of political relations with countries external to India and relations with the frontier tracts. Commercial, economic and other relations would fall primarily within the purview of the Legislature and of Ministers responsible thereto; in so far, however, as questions of the latter character might react on political questions, a special responsibility will devolve upon the Governor-General to secure that they are so handled as not to conflict with his responsibility for the control of external relations. There will accordingly be need for close co-operation, by whatever means may prove through experience most suitable for securing it, between the Minister holding the portfolio of "External Relations" and his colleagues the "responsible" Ministers.

12. Some misunderstanding may have been caused by the description, in paragraph 11 (ii) of the sub-Committee's second Report, of External Relations as including "Relations with the Indian States outside the Federal sphere." As set out in the Prime Minister's declaration at the close of the last Session, "The connection of the States with the Federation will remain subject to the basic principle that in regard to all matters not ceded by them to the Federation their relations will be with the Crown acting through the agency of the Viceroy."

#### FINANCIAL SAFEGUARDS.

13. In paragraph 11 of their Second Report the sub-Committee in recording the general agreement, to which reference has been made in an earlier paragraph of this Report, that the assumption by India of all the powers and responsibility which have hitherto rested on Parliament cannot be made at one step, recorded the consequential opinion that, during a period of transition in certain

situations which may arise outside the sphere of the Reserved Subjects, the Governor-General must be at liberty to act on his own responsibility, and must be given the powers necessary to implement his decision. And in paragraphs 14 and 18 to 20 of the same Report, they then proceeded to indicate in some detail their view of those situations in the financial sphere for which such special provision would be necessary. The proposals in this connection were, in the view of some members of the Committee, based upon the following fundamental propositions:—

(1) that it is essential that the financial stability and credit of India should be maintained;

(2) that the financial credit of any country rests in the last resort upon the confidence of the investor, actual and potential;

(3) that one result of the connection which has subsisted between India and the United Kingdom has been that her credit in the money markets of the world has hitherto been in practice closely bound up with British credit; and

(4) that a change in her constitutional relations with the United Kingdom which involved a sudden severance of the financial link between the United Kingdom and India would disturb confidence and so place the new Indian Government and Legislature at a grave disadvantage.

14. The proposals designed to avert such a situation have been further discussed at the Committee's present Session. While some members consider that in present circumstances the proposals in paragraphs 18 to 20 of the Second Report may not prove sufficient, others have advanced the view that they erred on the side of caution, and that since there was no ground for postulating imprudence on the part of the responsible Executive and Legislature of the future, nothing further was required in order to ensure financial stability, in addition to the normal powers of veto which would vest in the Governor-General, than the establishment, pending the creation by the Indian Legislature of a Reserve Bank, of a Statutory Advisory Council, so constituted as to reflect the best financial opinion of both India and London, which would be charged with the duty of examining and advising upon monetary policy. (Some of those who took this view were of opinion that it might not be necessary for the Statutory Advisory Council to remain in existence after the Reserve Bank has been established). It was, however, suggested by those who held such views that it might be advisable to provide that in the event of the rejection by the Legislature of the Government's proposals for the raising of revenue in any given year, the provision made for the last financial year should continue automatically to be operative.

Some members again, who had not participated in the Committee's earlier discussions, went further in their objection to the financial safeguards, and expressed themselves as unwilling

to contemplate any limitations upon the powers of an Indian Finance Minister to administer his charge in full responsibility to the Legislature, on the ground that a constitution which did not concede complete control of finance to the Legislature could not be described as responsible government, and that derogation from complete control would hamper the Finance Minister in the discharge of his duties.

15. The majority of the Committee adhere to the principles enunciated in their previous Report. They feel strongly that if the attitude of caution with which they approached this question last January was justified—as they are convinced by the considerations stated in paragraph 13 of this Report that it was—the financial crisis which has since overwhelmed both the United Kingdom and India in common with so many other countries has still further reinforced its necessity. They feel further that in the conditions of complete uncertainty and instability now so widely prevailing, it would serve no useful practical purpose here and now meticulously to examine or to attempt to decide upon the precise means to adopt to ensure and command confidence in the stability of the new order, and a safe transition to it from the old. The majority of the Committee therefore record it as their view that the conclusions reached in the Committee's Second Report form an appropriate basis for approach to the task of framing the constitutional definitions of the powers and interplay in the sphere of finance of the various elements which will compose the Federal Authority which they envisage, and that it would be premature at this stage to attempt to elaborate the application of these conclusions. While they are prepared to explore more fully the suggestion of an Advisory Finance Council, they cannot on the basis of the discussion that has taken place commit themselves to the view that such a Council would adequately secure the effective maintenance of confidence in the credit of India, which must be the essential test of the measures necessary in the sphere of finance.

#### COMMERCIAL DISCRIMINATION.

16. On this subject the Committee are glad to be able to record a substantial measure of agreement. They recall that in paragraph 22 of their Report at the last Conference it was stated that there was general agreement that in matters of trade and commerce the principle of equality of treatment ought to be established, and that the Committee of the whole Conference at their meeting on January 19th, 1931, adopted the following paragraph as part of the Report of the Minorities sub-Committee:—

“ At the instance of the British Commercial community the principle was generally agreed that there should be no discrimination between the rights of the British mercantile community, firms and companies trading in India, and the rights of Indian born subjects, and that an appropriate Con-

vention based on reciprocity should be entered into for the purpose of regulating these rights."

More than one member in the course of the discussion also reminded the Committee that the All-Parties Conference in 1928 stated in their Report that "it is inconceivable that there can be any discriminating legislation against any community doing business lawfully in India."

17. The Committee accept and re-affirm the principle that equal rights and equal opportunities should be afforded to those lawfully engaged in commerce and industry within the territory of the Federation, and such differences as have manifested themselves are mainly (though not entirely) concerned with the limits within which the principle should operate and the best method of giving effect to it.

Some, however, contend that the future Government should not be burdened with any restriction save that no discrimination should be made merely on the ground of race, colour or creed.

18. The Committee are of opinion that no subject of the Crown who may be ordinarily resident or carrying on trade or business in British India, should be subjected to any disability or discrimination, legislative or administrative, by reason of his race, descent, religion, or place of birth, in respect of taxation, the holding of property, the carrying on of any profession, trade or business, or in respect of residence or travel. \*The expression "subject" must here be understood as including firms, companies and corporations carrying on business within the area of the Federation, as well as private individuals. The Committee are also of opinion that, *mutatis mutandis*, the principle should be made applicable in respect of the same matters so far as they fall within the federal sphere, in the case of Indian States which become members of the Federation and the subjects of those States.

The States representatives expressed themselves willing to accept this principle provided that those who claim equal rights under it do not ask for discrimination in their favour in the matter of jurisdiction and will submit themselves to the jurisdiction of the States.

19. It will be observed that the suggestion contained in the preceding paragraph is not restricted to matters of Commercial Discrimination only, nor to the European community as such. It appears to the Committee that the question of Commercial Discrimination is only one aspect, though a most important one, of a much wider question, which affects the interests of all communities alike, if due effect is to be given to the principle of equal rights and opportunities for all.

20. More than one member of the Committee expressed anxiety lest a provision in the constitution on the above lines should hamper

\* As regards the interpretation of this sentence, see the remarks of Sir P. Thakurdas and Lord Sankey in the Plenary Session of 28th November, 1931, on presentation of the Report.

the freedom of action of the future Indian Legislature in promoting what it might regard as the legitimate economic interests of India. The Committee do not think that these fears are well-founded. Key industries can be protected and unfair competition penalised without the use of discriminatory measures. The Committee are, however, of opinion that it should be made clear that where the Legislature has determined upon some system of bounties or subsidies for the purpose of encouraging local industries, the right to attach reasonable conditions to any such grant from public funds is fully recognised, as it was recognised in 1925 by the External Capital Committee, and is recognised to-day by the practice of the Government of India itself.

21. It should however also be made clear that bounties or subsidies, if offered, would be available to all who were willing to comply with such conditions as may be prescribed. The principle should be a fair field and no favour. Thus a good deal was said in the course of the discussion of the need for enabling Indian concerns to compete more effectively with larger and longer-established businesses, usually under British management and financed with British capital. Where the larger business makes use of unfair methods of competition, the general law should be sufficient to deal with it; but many members of the Committee were impressed with the danger of admitting a claim to legislate, not for the purpose of regulating unfair competition generally, but of destroying in a particular case the competitive power of a large industry in order to promote the interests of a smaller one.

A view was expressed by some members, with reference to this and the preceding paragraph, that so far as the grant of bounties and subsidies is concerned it must be within the competence of the Legislature to confine them to Indians or companies with Indian capital.

The position of others was that set out at the end of paragraph 17.

22. With regard to method, it appears to the Committee that the constitution should contain a clause prohibiting legislative or administrative\* discrimination in the matters set out above and defining those persons and bodies to whom the clause is to apply. A completely satisfactory clause would no doubt be difficult to frame, and the Committee have not attempted the task themselves. They content themselves with saying that (despite the contrary view expressed by the Statutory Commission in paragraph 156 of their Report) they see no reason to doubt that an experienced Parliamentary draftsman would be able to devise an adequate and workable formula, which it would not be beyond the competence of a Court of Law to interpret and make effective. With regard to the persons and bodies to whom the clause will apply, it was suggested by some that the constitution should define those persons who are to be

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\* Two members would not include administrative discrimination within the scope of the clause.

regarded as "citizens" of the Federation, and that the clause should apply to the "citizens" as so defined; this indeed was a suggestion which had been made by the All-Parties Conference. There are however disadvantages in attempting to define the ambit of economic rights in terms of a political definition, and a definition which included a corporation or limited company in the expression "citizen" would be in any event highly artificial. The Committee are of opinion, therefore, that the clause should itself describe those persons and bodies to whom it is to be applicable on the lines of paragraph 18, and that the question should not be complicated by definitions of citizenship.

23. If the above proposals are adopted, discriminatory legislation would be a matter for review by the Federal Court. To some extent this would also be true of administrative discrimination; but the real safeguard against the latter must be looked for rather in the good faith and common sense of the different branches of the executive government, reinforced, where necessary, by the special powers vested in the Governor-General and the Provincial Governors. It is also plain that where the Governor-General or a Provincial Governor is satisfied that proposed legislation, though possibly not on the face of it discriminatory, nevertheless will be discriminatory in fact, he will be called upon, in virtue of his special obligations in relation to minorities, to consider whether it is not his duty to refuse his assent to the Bill or to reserve it for the signification of His Majesty's pleasure.

24. The question of persons and bodies in the United Kingdom trading with India, but neither resident nor possessing establishments there, requires rather different treatment. Such persons and bodies clearly do not stand on the same footing as those with whom this Report has hitherto been dealing. Nevertheless, the Committee were generally of opinion that, subject to certain reservations, they ought to be freely accorded, upon a basis of reciprocity, the right to enter and trade with India. It will be for the future Indian Legislature to decide whether and to what extent such rights should be accorded to others than individuals ordinarily resident in the United Kingdom or companies registered there, subject of course to similar rights being accorded to residents in India and to Indian companies. It is scarcely necessary to say that nothing in this paragraph is intended to limit in any way the power to impose duties upon imports into India, or otherwise to regulate its foreign trade.

25. It had been suggested at the last Conference, and the suggestion was made again in the course of the discussion in the Committee, that the above matters might be conveniently dealt with by means of a Convention to be made between the two countries, setting out in greater detail than it was thought would be possible in a clause in an Act the various topics on which agreement can be secured. The idea is an attractive one, but appears to present certain practical difficulties. The Committee:

understand that the intention of those who suggested it is that the Convention, if made, should be scheduled to and become part of the Constitution Act. It was, however, pointed out that such a detailed Convention would be more appropriately made between the United Kingdom and the future Indian Government when the latter was constituted, and that, in any event, it seemed scarcely appropriate in a Constitution Act. On the other hand, the Committee are of opinion that an appropriately drafted clause might be included in the Constitution itself, recognising the rights of persons and bodies in the United Kingdom to enter and trade with India on terms no less favourable than those on which persons and bodies in India enter and trade with the United Kingdom.

26. In conclusion, there was general agreement (subject to the view of certain members, set out at the end of paragraph 17), to the proposal that property rights should be guaranteed in the constitution, and that provision should be made whereby no person can be deprived of his property, save by due process of law and for public purposes, and then only on payment of fair and just compensation to be assessed by a Judicial Tribunal. In the case of the States, this principle may need some modification to avoid conflict with their internal rights. A provision of the kind contemplated appears to the Committee to be a necessary complement of the earlier part of this Report. Such a formula finds a place in many constitutions, and the form used in the Polish Constitution seemed to the Committee to be specially worthy of consideration.

Signed, on behalf of the Committee,

SANKEY.

ST. JAMES'S PALACE, LONDON;  
27th November, 1931.





## APPENDIX I.

MEMORANDUM ON FEDERAL FINANCE PREPARED BY THE  
FINANCE DEPARTMENT OF THE GOVERNMENT OF INDIA.

[This Memorandum is a departmental production only, and is not an expression of the corporate view of the Governor-General in Council.]

The object of this Memorandum is to provide material for discussion of some of the main financial issues which arise from the structure of federation proposed at the Round Table Conference. Although possible solutions of some of the problems may incidentally be indicated, it is recognised that the major issues will have to be considered from the political as well as from the purely financial aspect, while for a final solution of almost all these problems detailed examination by an expert Committee will probably be required after the renewed Round Table Conference has expressed its views on general principles.

PART I.—*Analysis of some of the Budgetary Problems under Federation.*

1. The distinction between "Federal" and "Central" subjects was examined at the Round Table Conference more from the administrative than from the budgetary point of view. It may be inferred, however, that, since the Conference rejected various schemes for separate Legislatures and separate Executives and came down on the side of a single bicameral Legislature and a single Executive with collective responsibility for both "Federal" and "Central" subjects, they intended that there should be a single Consolidated Revenue Fund, into which the proceeds of all taxation wherever imposed would flow and from which all supply would issue, whether required for Federal or for Central Administration (compare Section 81 of the Commonwealth of Australia Constitution Act, 1900, and Section 102 of the British North America Act, 1867). From this it would seem to follow that there would be only a single Budget, and that all taxation proposals would be considered by the Federal Government as a whole.

2. Such an arrangement certainly seems the best adapted to the realities of the situation. Moreover, a consideration of the existing liabilities reveals a special difficulty in the way of effective separation. There are extensive liabilities which have been incurred in the past, the most important of which are the Debt charges and Pensions which are secured (Section 20 of the Government of India Act) on the whole revenues of India. Those revenues include both those which are now contemplated as "Federal" and those which are to be "Central" as well as the revenues of the British Indian Provinces. Whatever formal budgetary distinction might be made, the past liability towards third parties would have to remain a charge upon the whole of the revenues.\* In the proposed Federation of all India, if it is intended

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\* In this connection reference is invited to the remarks made by Sir B. N. Mitra in the Federal Structure sub-Committee of the Round Table Conference (page 497 of Proceedings of that Committee). He said:—

"It is necessary for me to point out at this stage that there is one strong objection to this separation of our Budget into a Federal group and a Central group. The loans we have raised in the past in England are, under Acts of Parliament, charged on the revenues of India; and any attempt on our part to earmark certain items of such revenue in future for certain purposes may contravene the provisions of these Acts, and may, indeed, engender suspicion in the minds of investors in this country and react on our credit generally. I think, therefore, that we shall have to keep a combined Budget, treating all the heads as Federal, though the constitution will make clear the extent to which these heads affect the Indian States. This may also constitute a consideration in support of Lord Reading's idea that both the Federal Executive and the Federal Legislature will have to deal with all subjects irrespective of the fact of whether they may concern the States or not."

that new debt and liabilities of the Federal Government are to be secured upon the revenues of the Federal Government only and not upon those of the Units of the Federation, Section 20 of the Government of India Act will require appropriate amendment.

3. The questions at issue, however, require closer analysis if the financial arrangements for the new Federation are to be worked into a practical scheme. The dominant facts of the situation which have to be provided for are:—

(1) that the Federation will include Units which are not part of "British India" and which have their own varying systems of taxation. Their position *vis-à-vis* the existing liabilities incurred by British India in the past will have to be clearly defined;

(2) that certain taxation included in the present Government of India Budget is levied only on the British Indian Provinces, whereas some other taxation falls upon consumers throughout India; and

(3) that provision should be made for surplus revenues of the Federal Government being made over to the members of the Federation. In this connection a distinction will clearly have to be made between the taxation which is collected from the British Indian Provinces only and that which is collected indirectly from all members of the Federation.

4. Before the framework of a financial scheme can be worked out, it is necessary to consider several specific points. These are dealt with in the following paragraphs.

5. *The Public Debt.*—The Round Table Conference recommended that future Federal loans should be Federal and that the existing public debt of India should be Central. As remarked above, such allocation cannot absolve "Federal" revenues from their responsibility to third parties for the existing debt, and, indeed, it is not to be supposed that the Conference intended to suggest that the existing debt should be served only by Income-tax collections. But while preserving the responsibility to third parties, an important distinction will clearly have to be made as between members of the Federation between debt charges which in view of their historical origin might properly be treated as appertaining to British India and those which have to be assumed by the new Federal Government. The nature and extent of this distinction may now be examined.

6. The heading "Debt Charges" in the Government of India's Budget includes three separate sub-heads:—

- (1) The interest on ordinary debt;
- (2) Interest on other obligations; and
- (3) Provision from revenue for reduction or avoidance of debt.

7. Sub-heads (1) and (2) may be considered together.

*Interest on ordinary debt.*—The figure which appears in the Budget is a net figure after allocation of the interest on debt incurred for Commercial Departments and Provincial Governments, *viz.*—

- (1) Railways.
- (2) Posts and Telegraphs.
- (3) Irrigation Works (Central).
- (4) Salt Works.
- (5) Forests.
- (6) Security Printing.
- (7) Vizagapatam Harbour.
- (8) The Provincial Loans Fund.

*Interest or other obligations.*—This sub-head includes interest on the following items:—

- (1) Deposits in Post Office Savings Banks, and Cash Certificates.
- (2) Special loans—comprising in the main Funds deposited with Government as endowments of various institutions.
- (3) Deposits of Provident Funds, of which the most important are the Railway and General Provident Funds.
- (4) Deposits of Service Funds, which consist of the deposits of certain Funds, mostly managed by non-official institutions, which are permitted to bank with Government.
- (5) Deposits of certain special Funds such as the Postal Insurance and Life Annuity Fund.
- (6) Fixed Deposits of Provincial Governments.
- (7) Deposits of balances of the Famine Relief Fund.
- (8) Deposits of the Reserve and Depreciation Funds from the Railways and other Commercial Departments or undertakings.

For the purpose of the present analysis no difference need be made between ordinary debt and other obligations. The Government of India have been put in possession of Funds partly by the raising of funded or unfunded or floating debt, and partly by receiving deposits from various institutions, from the public and from Provincial Governments. The Public Debt of India also includes certain liabilities which have not involved the receipt of cash. In regard to certain liabilities incurred in connection with the purchase of formerly Company-owned railways, the Government of India received property instead of money. Others, however, the most important of which are the discount at which various loans have been issued, the liability to the British Government of India's war contribution, and bonuses accrued but undrawn on cash certificates, never in any sense involved the receipt of money or equivalent assets.

8. It has been customary for certain purposes in discussing the debt position of the Government of India to divide it into "productive" and "unproductive." It is more accurate, however, to say that the Government of India has on the one side a general body of Public Debt and on the other certain assets. Some of these assets have been regularly commercialised and are, or will be, revenue producing. Certain of these commercialised assets (*e.g.*, the Railway undertaking) provide sufficient revenue to meet the interest on the corresponding debt, while others (for instance, the Posts and Telegraphs Department) do not at present produce sufficient revenue to meet the whole of the interest charges. Others of the assets are liquid, *i.e.*, they are either in the form of cash or its equivalent, or are capable of early and automatic realisation. There are certain others which may be called fixed assets, which have been acquired partly out of loan funds and partly out of revenue, and which are not revenue producing in any full sense, nor can be regarded as realisable. Lastly, there are the currency reserves and Government's obligations as currency authority, which require special treatment.

Taking all these factors into account it may be stated that the Government of India have a certain margin of liabilities which is uncovered by commercialised or productive assets, which margin may be said to constitute the "unproductive" debt. Or, again, it may be considered that the Government of India have a margin of liabilities entirely uncovered by any assets of any kind, and this balance may be termed "uncovered" debt.

9. In considering the main problem of locating responsibility as between "Federal" and "Central" for the existing Public Debt of India, the matter of primary concern is the destination of the assets. The Federal authority should undoubtedly take over with any particular asset the liabilities of the nature of debt attached to it.

(a) *Commercialised and other productive assets.*—There seems no reason why the Federal authority should not take over the whole of the following

commercialised or interest-bearing liquid assets with a corresponding portion of the debt:—

	On 31st March, 1931.
	Rs. crores.
Railways . . . . .	745.29
Posts and Telegraphs . . . . .	} 23.41
Central irrigation works . . . . .	
Salt works . . . . .	
Central forests . . . . .	
Opium factory . . . . .	
Lighthouses . . . . .	
Nasik security printing . . . . .	} 149.14
Vizagapatam harbour . . . . .	
Provincial loans fund . . . . .	19.60
Other interest-bearing advances . . . . .	
Total capital value of these assets . . . . .	<u>937.44</u>

(b) *Liquid assets*.—It is suggested that the Federal Government should also take over the whole of the position of the Government of India, mostly arising out of its functioning as a banker to Provincial Governments and others, as regards the remaining liquid assets on the one side and the corresponding liabilities on the other. It is not possible yet to calculate the amount of these for a date later than 31st March, 1930. On that date, however, these items constituted a net asset, *i.e.*, an excess of assets over liabilities, of Rs. 11,08.54 lakhs.

(c) *Fixed assets*.—The Federal authority will succeed to the whole of the buildings and public works of all kinds which are at present the property of the Government of India. The replacement value of these is of course an enormous sum. The greater part of them has been constructed out of revenue. Instead of financing such works from revenue resources, the Government of India would have been justified in the past, following the practice of other countries and even according to the practice pursued generally by Provincial Governments in India, in financing the works from loan funds and correspondingly increasing the revenue available for accumulation in revenue reserves. From such revenue reserves Government could have met subsequent revenue deficits which were in fact met by borrowings and which have therefore gone to swell the margin of "uncovered" debt. The Government of India, however, would be disposed as part of a general scheme of federal finance to consider that no liability attaches to such assets as have been acquired out of revenue in the past, and that these should pass to the Federal authority without any corresponding capital liability.

On the other hand, certain fixed assets have been financed definitely from loan funds and part of the existing public debt was definitely raised for these purposes. The two items in this class are:—

	31st March, 1931.
	Rs. lakhs.
New Delhi . . . . .	14,63.53
Bombay military lands . . . . .	2,33.03
TOTAL . . . . .	<u>17,01.56</u>

It is suggested that as the Federal Government would become the proprietor of these assets, it should assume responsibility for the corresponding liabilities.

(d) *Currency reserves*.—The position of the Government of India as currency authority raises complicated issues which will require special and exhaustive treatment. It is necessary for the present purpose to consider that matter only so far as it has reactions on the Public Debt position. The Federal Government would take over the very substantial currency reserves of the Government of India (either direct or through the intermediary of a Central Bank) on the ground that the Government of India have in the past acted as currency authority for practically the whole of India and not merely for British India alone. It would consequently follow that the Federal Government would become a party to the liability side of the currency account.

The existing currency reserves, viz., the Paper Currency Reserve and the Gold Standard Reserve, have been built up in main out of profits earned on the currency. The Gold Standard Reserve was accumulated from profits on silver coinage, and represented roughly the difference between the cost price of silver and the nominal value of it as coin. In recent years silver coin has been returning from circulation in very large quantities, and in order to reduce the holding of such an unproductive asset, some of this silver has been sold. The loss which has had to be faced at the time of selling is taken as the difference between the nominal value of the coin and the sale price of the silver. This loss ought strictly speaking to have been met out of the currency reserves. In fact, this has not been done, and on 31st March, 1931, this element had gone to swell the Public Debt to the extent of Rs. 15.21 lakhs. If this loss had been met out of the existing currency reserves, then the amount of those reserves to be handed over to the Federal authority would have been correspondingly reduced. If the Federal authority takes over the present currency position, it should assume responsibility for the portion of the Public Debt which represents this loss.

There may be at any particular time another liability in the Public Debt of India incurred directly in connection with the currency obligations of the Government of India. This is the amount of the "created" securities in the Paper Currency Reserve other than those created for meeting the loss on the sale of silver. On 31st March, 1931, there was no obligation of this class, but if such an obligation should reappear the party taking on the Government of India's currency position should assume direct responsibility for it.

(e) *Other distinguishable items of debt*.—There is another distinguishable item in the "uncovered" debt of India, viz., a sum of about Rs. 25 crores, representing liabilities which the Government of India have had to assume in the form of discounts or during conversion operations. This liability must be regarded as spread over all the purposes which the public debt has served and should be divided between "Federal" and "Central" in proportion to the other interest-bearing liabilities of each. The Federal authority should accordingly take on about Rs. 20 crores of this item.

(f) Lastly, the Federal Government would probably have to assume responsibility for Rs. 45.15 lakhs of the existing Public Debt representing the balance of the commuted value of military and railway pensions met from borrowed funds.

10. The approximate liability of the Federal authority (on the figures for 31st March, 1931) in the matter of the Public Debt of India as set out in the preceding paragraphs may now be summarised as follows:—

	<i>Rs. lakhs.</i>
Against commercialised or productive or interest-bearing liquid assets—para. 9 (a) . . . . .	937,44.00
Against other liquid net assets—para. 9 (b) . . . . .	11.03.54
Against fixed assets financed from borrowed money—para. 9 (c) . . . . .	17,01.56

	<i>Rs. lakhs.</i>
Against loss on silver—para. 9 (d) . . . .	15,21.00
Against other created securities in the Paper Currency Reserve—para. 9 (d) . . . .	<i>Nil.</i>
Share of discount, etc.—para. 9 (e) . . . .	20,00.00
Balance of commuted value of military and railway pensions—para. 9 (f) . . . .	45.15
<b>TOTAL</b> .	<b>1,001,20.25</b>

The total interest-bearing Public Debt of India of all kinds may for present purposes be taken at about 1,173,57.70 lakhs. The balance therefore which would remain a Central liability would be Rs. 172,37.45 lakhs.

11. In what has been said so far no distinction has been made between the sterling and rupee portions of the debt of India. The sterling part has for the purposes of present calculations been converted into rupees at the statutory rate of 1s. 6d. Most of the sterling debt represents in fact liabilities incurred specifically in connection with the Railway undertaking. It would therefore be correct, if any such distinction were made, to regard the main portion of the sterling debt as a railway liability to be assumed direct by the Federal Government. In any case it will make for simplicity if Central's liability to Federal is recognised as a wholly rupee liability.

12. For the balance of interest-bearing debt not covered by commercialised assets, *viz.*, about Rs. 236,13.70 lakhs, the interest charge for 1931-32 is Rs. 11.99 lakhs. "Central" would be responsible for about Rs. 172,37.45 lakhs of this debt, the proportionate interest on which would amount to Rs. 8.77 lakhs. ("Central" would also in the first year of the Federation be responsible for providing about Rs. 1.14 lakhs representing accrued discount during the past year on floating debt.) Against their share, Rs. 3.22 lakhs, of interest charges, Federal would receive about Rs. 1.00 lakhs receipts by way of interest on loans to Indian States and others, which would be included among the assets which they would take over. (*Cf.* para. 21.)

13. It is now possible to consider the allocation of the provision for "Reduction or avoidance of debt." Although in practice this amount has in the past been partly utilised to avoid fresh borrowings, the whole provision is really an annual sinking fund contribution and will hereafter be so described. The Federal Government would in future be responsible for providing an appropriate sinking fund for its portion of the debt, while the "Central" share would have to be separately provided for, or part of the service of the "Central" debt, on the lines proposed below. The total interest-bearing debt on 31st March, 1931, would have been divided as follows:—

	<i>Rs. lakhs.</i>
Federal . . . . .	1,001,20.25
Central . . . . .	172,37.45
<b>TOTAL</b> .	<b>1,173,57.70</b>

Assuming that the present basis for calculating the sinking fund contribution will continue to be followed, the amount provided in the 1931-32 budget, *viz.*, Rs. 678.37 lakhs, will have to be split up between Federal and Central. In fact, the calculations leading to this figure recognise some difference between "ordinary debt" and "other obligations," and are based on a total debt figure of Rs. 1,019,72 lakhs on 31st March, 1931. This need not affect the proportionate amounts to be provided by Federal and Central. However, for this purpose, an amount of about Rs. 30 lakhs of expired regular debt

should be added to the central portion of the debt. The amounts may therefore be put at:—

	<i>Rs. lakhs.</i>
Federal . . . . .	5,78
Central . . . . .	1,00

14. The arrangement outlined above represents a simple plan. The "Central" portion of the debt would be, at the figure stated, fixed at the time of the inauguration of the constitution and it would progressively diminish each year to the extent of the provision made annually for the reduction of debt. The "Central" debt would not increase by new borrowing to meet new capital expenditure because all new expenditure would be met by the Federal Government. On the other hand, there would be a certain kind of new borrowing in which the Central Government might be held to be interested, *viz.*, in the case of loans issued in conversion of "pre-Federation" loans or to raise funds for their repayment. In such cases it might be argued that the "Federal" and "Central" shares should be allocated according to the proportion of their respective shares in the total Public Debt at the time of the inauguration of the Federal constitution. Such operations might have the effect of increasing the nominal value of the "Central" share of debt, *e.g.*, if money were raised by the issue of  $4\frac{1}{2}$  per cent. bonds at 90 in order to pay off an existing loan at par. This would add a considerable complication; and it is suggested that it would be much simpler if the "Central" share in the pre-Federation debt were fixed as a definite capital sum bearing a definite rate of interest at the time of the inauguration of the new constitution, which would be reduced each year as the capital is repaid by the Central share in the Reduction of Debt provision. If this were done the Federal Government would gain if the pre-Federation debt were renewed at a lower rate of interest, and in the contrary case would lose. But the difference would be small, and as the rates for re-borrowing would depend on the credit of the Federal Government it is only fair that they should profit or lose by the result. Such an arrangement would avoid complicated calculations.

The allocation of the capital debt and of debt charges proposed in the preceding paragraphs is summarised in the following table:—

	"Federal."	"Central."	Total.
Capital . . . . .	1,001,20	172,37	1,173,58
Interest (gross) . . . . .	3,22*	8,77	11,99
Less Recovered . . . . .	1,00*	—	1,00
Net Interest . . . . .	2,22	8,77	10,99
Sinking Fund . . . . .	5,78	1,00	6,78

The two figures asterisked should each be increased by a sum of about Rs. 40 crores, the recoverable interest on the commercialised debt.

15. *Superannuation allowances and pensions.*—There was no discussion on the subject of pensions at the Round Table Conference. A pension, considered in the light of deferred pay, is a liability, like a provident fund bonus, which arises during the service of an officer. Yet it is the universal practice of Governments not to reserve in advance for a pensionary liability, but to regard a pension as a legitimate charge against the revenues of the future. Consequently any party appropriating a part of future revenues should assume responsibility for a corresponding proportion of the pensionary liability of the past. The present continuing active pension lists may be put at—

	<i>Rs. crores.</i>
Civil (net) . . . . .	2½
Military (included in the Army Budget among non-effective charges) . . . . .	7¾
<b>TOTAL</b> . . . . .	<b>10</b>



The exact liability of "Central" revenues for pensions would be a suitable matter for reference to an expert Finance Committee, if one is appointed. For the purpose of this budgetary analysis it is perhaps sufficient to assume that the initial share of "Central" will not exceed the amount of the existing net civil pension list.

16. *The Centrally Administered Areas.*—These areas, consisting of the North-West Frontier Province, Baluchistan, Ajmer-Merwara, the Andamans and Delhi, are for the most part deficit administrations, the deficit on the North-West Frontier Province being very large. There are, however, possibilities of profit, at any rate, in the Andamans where extensive schemes for forest development have recently been undertaken. These areas are no more connected with the major British Indian Provinces than they are with the States, and it seems logical that they should become a "Federal" charge. There are parallels in history, *e.g.*, in the United States, for the existence of "territories" under direct administration of the Federal Authority, and, in fact, the majority of the States in the U.S.A. have passed through this stage, some, such as New Mexico and Texas, having become "States" in comparatively recent times. Again, New Guinea is an almost exact parallel. It is a territory under the Australian Commonwealth, which makes a fixed subsidy of £20,000 annually towards its administration, besides varying subsidies from year to year. In addition to the areas mentioned above, there are a number of smaller areas in Rajputana, Central India, Hyderabad, Bangalore and the Western India States Agency, the receipts and expenses of which come into the Government of India's Budget.\* These are all connected with political activities. Coorg again is a minor administration with a separate settlement and constitution. The receipts and expenditure of the administered areas in the 1931-32 Budget (omitting expenditure classed as political and Frontier watch and ward) are as follows:—

	(In lakhs.)	
	Expenditure.	Revenue.
North-West Frontier Province . . . . .	1,80	85
Baluchistan . . . . .	46	22
Delhi . . . . .	47	28
Ajmer-Merwara . . . . .	19	17
Andamans and Nicobars . . . . .	46	24
Rajputana . . . . .	15	4
Central India . . . . .	14	6
Hyderabad . . . . .	8	6
Bangalore . . . . .	14	14
Western India States Agency, etc. . . . .	20	8
<b>TOTAL . . . . .</b>	<b>4,09</b>	<b>2,14</b>

It is to be noted that the figures given above are merely recorded for the purpose of making the financial position clear, and do not convey any implication as to the administrative arrangements which might be made (*e.g.*, particularly in the case of the North-West Frontier Province, for which a reformed constitution is contemplated). The present financial position is some

\* It is arguable that the considerations connected with these areas are such that the expenditure on them should be classed as political and therefore as a Reserved item. Somewhat complicated considerations arise in their case, which will require careful examination when the financial details are settled—presumably by an expert committee. The amounts involved, however, are not of sufficient magnitude to affect materially the general picture which we are presenting—whatever may be the ultimate decision as to how expenditure on these areas is to be classed and provided for.

indication as to the measure of financial assistance which may be required for these areas, whatever arrangements may be made for their administration.

17. *Excises on motor spirit, kerosene and silver.*—The Round Table Conference contemplated that the position with regard to these items should “remain as at present,” by which they apparently classified them as “Central.” But since these taxes are paid by the consumer all over India, in the States as well as in British India, they should be classed as federal sources of revenue, just as much as Customs, with which they are intimately connected.

18. *The revenue and expenditure from the Provincial Road Fund* balance one another and can be omitted for purposes of this budgetary analysis. Under a federal scheme the Road Fund will presumably become a federal fund, and all members of the Federation will get their proportionate share according to consumption of petrol, in accordance with the principle which has been taken as the basis of the existing scheme.

19. *Opium* under the Round Table Conference classification is also “to remain as at present.” We have to distinguish “provision” opium which is exported and “excise” opium which is manufactured for the British Indian Provinces. There is no profit connected with the latter since it is sold at cost price. The revenue from the export of opium will disappear before long, in view of the policy of reducing exports annually, except for a few lakhs from the sale of medicinal opium. There are, however, strong reasons for making the subject “Federal,” viz., its international importance and also the relations involved with the opium-growing and opium-consuming States.

20. *Audit and Accounts.*—The Round Table Conference contemplated splitting up audit into Federal and Central, and some members wished to make Provincial Audit “provincial.” It has always been contemplated that under the new constitution the Provincial Governments will pay for their own accounts (about 40 lakhs in the aggregate). They should pay for audit also (about Rs. 26 lakhs in the aggregate) since the cost of audit depends largely on the elaboration of accounts, though the release of some central revenues may be necessary to make these payments possible. So far as the compilation and audit of the Central Government's accounts is concerned, it is predominantly “Federal” having regard to the important subjects included in the federal sphere, Army, Railways, Posts and Telegraphs, etc., and for present purposes Central Government accounts and audit have been taken as “Federal.” The cost amounts to Rs. 40 lakhs in the aggregate.

21. *Interest Receipts.*—This head includes the interest on the Gold Standard Reserve, which has been taken as “Federal,” and the payments from Indian States, public bodies or private persons to whom the Government of India have granted loans. The latter payments, amounting to Rs. 1 crore, are receipts on account of part of the allocated debt and may be regarded as an “appropriation in aid” against the federal Debt charges. They have been treated as a deduct entry accordingly from federal's share of interest payments (*vide* para. 12). It should be noted that the Gold Standard Reserve interest will disappear as soon as a Reserve Bank is formed (and the same is true of currency profits), though ultimately some of it should return as part of the Government share in the profits of the Bank. In the early years, however, the Bank will be consolidating its reserves and there are unlikely to be any profits to share with Government.

22. *Extraordinary Receipts.*—These represent the sum received by way of reparations. They should logically be treated as “Central” as some set-off against the unproductive debt incurred in the war period. These receipts would be added to the balance for distribution among the Provinces.

23. *Allocation of other expenditure.*—It is suggested that the whole of the normal expenditure at present incurred by the Government of India ought, under a proposed Federal constitution, to be treated as Federal. If the Federation is a reality, there should be no general administrative expenditure which does not concern the whole of the Federation. Similarly expenditure on scientific departments and scientific research, Indian Stores Department

and civil works should all be regarded as being of all-India interest. Certain special items which occur in the last Budget might perhaps be excluded, as for example, the terminable grants to Benares and Aligarh Universities, because these, so long as they remain, represent merely the completion of a programme for which the Government of India undertook the liability. But when these terminable grants are completed, any new grants of such a nature should be treated as being of all-India interest.

24. On the basis of the considerations advanced in the preceding paragraphs it is possible to formulate a simple plan of which the main features may be stated as follows:—

(i) That there should be a single Federal Budget in which provision should be made for the whole of the charges hitherto incurred by the Government of India (with the exception of Rs. 66 lakhs for Audit and Accounts which would be transferred to the Provinces).

(ii) That in the charges on the Federal Budget a *pro-forma* distinction should be drawn between those which are truly Federal charges, and those which ought fairly to be borne by the taxpayers of British India only. These have been hitherto referred to as "Central," and this expression can conveniently be used. These "Central" charges would be—

(a) The service of such portion of the pre-Federation debt as is not taken over, against assets also taken over, by the Federation.

(b) A certain portion—to be assessed—of accrued superannuation allowances and pensions.

(c) Such other charges, if any, as may eventually be classed as "Central" on the ground that they are incurred solely in the interests of the British Indian Provinces. (As noted below, this classification must be a matter for detailed enquiry. For the present, for the purpose of this preliminary presentation of the case, it is assumed that there will be no charges of this class, and for the reasons stated in para. 23 this represents, theoretically at least, the correct position.)

The suggestion which we have made is that the amount of the charges under (a) and (b) should be fixed at the time of the inauguration of the Federation. The charges under (a) would gradually diminish as the "Central" debt was gradually paid off by the sinking fund.

(iii) The funds to meet these "Central" charges would be provided by the taxpayers of British India by allocating the requisite amount from the proceeds of taxes on Income—this amount being treated as a first charge on such proceeds. This arrangement may be described by saying that British India would provide the Federal authority with a sort of "endowment fund" to meet charges which, although they have to be borne on the Federal Budget, are nevertheless properly attributable to British India.

(iv) Subject to the sums required to meet these "Central" charges, taxes on Income—inasmuch as they would, according to present expectations, only be levied in British India—would not be Federal taxes, and their proceeds would be available for distribution among the Provinces. (For possible methods for such distribution see footnote.\*).

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\* Various methods would be possible for allowing the Provinces to participate in the taxes on Income. For example, they might be collected up to a rate which would safely cover the amount required to meet the "Central" charge in the Federal Budget—*vide* (iii) on a uniform basis for British India, and beyond this rate each Province might be left free to make surcharges on its own share. Alternatively the taxes on Income as a whole (not merely "personal" Income-tax) might, subject always to the prior charge in favour of the Federal Budget, be dealt with in the manner proposed by Sir Walter Layton for his "Provincial Fund."

Otherwise the *status quo* as regards revenue would be preserved. In connection with Income-tax, however, it is necessary to mention a special feature. The Provinces could have no claim to share in the proceeds of the tax levied in the centrally administered areas, or on officers employed by the Federal or Central Government. These proceeds, although in certain cases some adjustments of detail may be necessary, can properly be regarded as Federal and are so treated in this memorandum. Against this an appropriate share of the collection charges would have to be set off. The gross amount of tax on the present basis is estimated at about 1 crore to be included in "Federal."

(v) The Indian States would also make a contribution to the Federation through their share of indirect federal taxation. In these circumstances naturally no claim would arise on the part of the States for a share in the revenues derived from Customs and Salt under the existing arrangements, which would be applied solely for the general purposes of the Federation.

(vi) As a result of this arrangement the Federal authority would be left to depend on indirect taxes (Customs and Salt) supplemented by Opium Receipts, Profits from commercial undertakings, Currency profits, and certain payments from the Indian States.

(The point must be noted here that it may be argued on behalf of the Indian States that, whereas the tax-payers of British India would under this arrangement be contributing to truly federal expenditure only through indirect taxes, the tax-payers of the Indian States would be contributing not only in this way, but also through direct payments and in certain other ways. This claim, and the possible adjustments which may have to be made to meet it, will be considered later. For the present the picture can be most clearly presented by assuming that the *status quo* as regards these payments will be preserved.)

(vii) There would be no interference by the Federal Government with the internal taxation of the States for their own purposes, any more than with the British Indian Provinces' taxation, within the limits permitted by the constitution; nor would States' revenues be made liable for federal debt, old or new.

25. An attempt may now be made to show how a Budget might work out on these principles, taking the Budget figures of 1931-2 in the first instance:—

Budget, 1931-2 (in lakh of rupees).

Expenditure.	—	Receipts.
	<i>Reserved.</i>	
52,00	Military . . . .	..
1,63	Political . . . .	..
2,53	Frontier Watch and Ward .	..
,32	Territorial and political pensions . . . .	..
,32	Ecclesiastical . . . .	..
56,80		..

Expenditure.		Receipts.
	<i>Unreserved.</i>	
,98	Customs . . . . .	55,45
1,25	Salt . . . . .	7,05
,74	Opium . . . . .	2,16
..	Railway contributions . . . . .	5,36
..	Payments by Indian States . . . . .	,74
,98	Posts and Telegraphs . . . . .	—,49
..	Taxes on Income (Federal offices and in Federal territory) . . . . .	Gross 1,00 less ,04 collection charges ,96
..	Interest on Gold Standard Reserve . . . . .	1,92
,51	Currency . . . . .	,59
,28	Mint . . . . .	,04
1,68	General administration . . . . .	..
,40	Audit . . . . .	..
1,02	Scientific Departments . . . . .	..
,35	Aviation . . . . .	..
,08	D.G.I.M.S., &c. . . . .	..
,09 (net)	Public Health Commissioner . . . . .	..
,03	School of Mines . . . . .	..
,18	Grants to Universities . . . . .	..
,17 (net)	Agricultural Research, &c. . . . .	..
,27 (net)	Emigration, &c. . . . .	..
,43	Ports and Pilotage (should balance in long run) . . . . .	,36
,05 (net)	Indian Stores Department . . . . .	..
,21 (net)	Stationery and Printing . . . . .	..
1,02 (net)	Civil Works . . . . .	..
4,09	Administered areas . . . . .	2,14
,65	Miscellaneous . . . . .	,31
2,36	Pensions, &c. . . . .	2,36
10,99	Interest . . . . .	8,77
6,78	Sinking Fund contributions (should balance in long run).	1,00
		Contributions from "Central" 12,13
35,59		88,72
Total . 92,39	Deficit .	Total . 88,72
		3,67

Expenditure.		Receipts.
	<i>Central.</i>	
	Reparations . . . . .	,30
,77	Taxes on Income . . . . .	Proportionate cost of collection re- covered from Federal . . . . .,04
		Collections Gross . 16,45
		<i>Deduct—</i> to Federal . 12,13
		to Provincial Fund . . . 3,89
		,77
93,16	GRAND TOTAL .	93,16

**NOTE.**—The result differs from Budget surplus of 1 because:—

- (a) 66 has been transferred to Provinces for Accounts and Audit.
- (b) 8 from General Administration for U. P. scheme of separated accounts.
- (c) 2 on account of State Prisoners Acts expenditure debited to Provinces (as recommended by Round Table Conference).
- (d) 55 representing sale proceeds of Indo-European Telegraph Department has been ignored.
- (e) In addition, the Provincial Fund would have to provide in the first year about Rs. 1,14 lakhs on account of discount accorded on floating debt in the past year.

26. The specimen Budget given in the preceding paragraph is valuable for illustrative purposes, but it is based rather on the past than the future and it is obviously desirable to attempt some estimate of the position which will take account of certain changes and occurrences which must be, according to present discussions, assumed as likely. For this purpose a second illustrative Budget based on a forecast of the position that might be expected in the year 1934-5 has been prepared and is set out in the succeeding paragraph.

The assumptions made in preparing this budget are—

- (1) That Burma will be separated (this is dealt with in more detail in the next paragraph);
- (2) that a Reserve Bank will have been set up, to which will pass the management of the Currency and the Reserves, thus depriving the Federal Government of these sources of income;
- (3) that opium revenue will have disappeared except for 15 lakhs from medicinal opium;
- (4) that the "tributes" from Indian States will be retained as a receipt in the Federal Budget (this question is further discussed in a later paragraph);

(5) that the revenue from Customs will have increased as a result of usual expansion by 3 crores, but will be reduced by 5.44 crores owing to the separation of Burma;

(6) that the Posts and Telegraphs Department will be able to work without loss though without profit. The special receipt from sale of the Indo-European Telegraph Department in 1931-2 is, of course, omitted;

(7) that ordinary civil expenditure will remain the same as in 1931-2, except that the expenditure on the census is omitted; and it is assumed that the revenue and expenditure for the Mints will balance, instead of showing a loss as in 1931-2;

(8) that the receipts from Income-tax will not exceed their present figure of about 17 crores net, the assumption being that, if there were a considerable increase under this head, the rates recently imposed would be reduced. We have to allow, however, for 2.30 lakhs of Income-tax receipts going to Burma.

(9) Purely balancing heads, such as Ports and Pilotage and Light-houses, are omitted;

(10) No credit has been taken for receipts from new Federal Fund taxation;

(11) No attempt has been made to forecast future military expenditure except that a saving of 2 crores has been taken as due to the separation of Burma.

27. With regard to the separation of Burma, the assumptions made have, of course, no authority, but are based on certain preliminary calculations. Briefly, the main assumptions are as follows: Loss of revenue, 5.44 lakhs under Customs, 2.30 lakhs under Income-tax, 35 under Salt, 3 under Reparation receipts (which, otherwise may be taken as having dropped to 27) and 35 under the Railway contribution. The principal reductions in expenditure to set off against this are: under Interest, 1.04 lakhs; reduction and avoidance of debt, 75; Frontier Watch and Ward, 62; Pensions, 26; Customs expenditure, 13; Income-tax Department, 10; Audit, 7; and Scientific Departments, 9. Under Posts and Telegraphs there will be a saving to India of 26 lakhs, but, as stated above, the assumption made is that the Indian Posts and Telegraphs Department's accounts will just balance.

28. The illustrative Budget is then as follows:—

Expenditure.	—	Receipts.
	<i>Reserved.</i>	
50,00 (net)	Military . . . .	..
1,60	Political . . . .	..
1,91	Frontier Watch and Ward .	..
,31	Territorial and political pensions . . . .	..
,30	Ecclesiastical . . . .	..
54,12		

Expenditure.		Receipts.
	<i>Unreserved.</i>	
,85	Customs . . . . .	53,01
1,23	Salt . . . . .	6,70
	Opium . . . . .	,15
	Railway contribution . . . . .	5,01
	Payments by Indian States . . . . .	,74
	Taxes on Income (Federal) . . . . .	Gross 1,00 less ,04 collection charges ,96
1,68	General administrations . . . . .	..
,33	Audit . . . . .	..
,91	Scientific Departments . . . . .	..
,34	Aviation . . . . .	..
,18	Grants to Universities . . . . .	..
,17 (net)	Agricultural Research, etc. . . . .	..
,27 (net)	Stationery and Printing . . . . .	..
,95 (net)	Civil Works . . . . .	..
4,09 (net)	Administered Areas . . . . .	2,14
,60	Miscellaneous and other Heads . . . . .	..
2,10	Pensions, etc. . . . .	2,10 } Contributions
9,69	Interest . . . . .	7,71 } from
6,04	Sinking Fund Contributions . . . . .	,81 } "Central" 10,62
29,43		79,33
Total . 83,55		Total . 79,33 4,22
	<i>Central.</i>	
	Reparations . . . . .	,24
,67	Taxes on Income . . . . .	Proportionate cost of collection re- covered from Federal . ,04
		Collections gross . 14,15
		Deduct— to Federal. . 10,62
		to Provincial Fund . . 3,14
		,67
84,22	GRAND TOTAL .	84,22

NOTE.—The Provincial Fund would have to meet the accrued liability for discount on floating debt for the previous year.



29. Before proceeding to examine the conclusions to be drawn from the two specimen Budgets which have been given, it must be emphasised that these are in a sense of a *pro formâ* character. They are based on estimates which themselves have been based on past experience, and, so far as any forecast has been given in the second Budget, this forecast has assumed normal development of revenue and continuance of the general fiscal policy which has hitherto been followed. An attempt will be made later to consider how the present economic crisis on the one hand, and the possibility on the other hand, of changes in policy, may affect the position, but in the meanwhile an examination of the tables as given may be of value.

30. The main point which emerges from these specimen Budgets is that, as a result of treating Income-tax receipts as available for distribution among the Provinces—subject only to the deduction of a fixed sum to meet “Central” charges—a balance would be released for the benefit of the Provincial revenues while the Federal Budget would be left with a deficit. The sum available for the Provinces—against which it must be remembered that, according to our proposals, they will have taken over a charge of Rs. 66 lakhs for Accounts and Audit—would have been Rs. 4.1 crores on the basis of the 1931-2 Budget and would be Rs. 3.57 crores on the basis of the 1934-5 forecast, while the deficit in the Federal Budget would have been Rs. 3.88 crores on the 1931-2 basis and would be Rs. 5.16 crores on the 1934-5 basis. The deterioration in the latter year is of course due to the anticipated effects of the separation of Burma and to the loss of profits from currency and currency reserves due to the assumed formation of a Reserve Bank.

On the basis of the picture thus presented the chief practical points for consideration must be:—

- (1) Whether such a deficit on the Federal Budget could be met.
- (2) Whether the result arrived at is really fair to all members of the Federation.

As regards (1), if normal economic conditions can be assumed, it should not be beyond the bounds of possibility to meet such a deficit, partly by retrenchment in expenditure and partly by the imposition of new taxes to be collected from the whole of India, i.e., the sort of taxes which are referred to later under the description of “Federal fund taxes.”

As regards (2), there are certain important questions which will have to be discussed when a detailed examination of financial arrangements is made. It must be asked in the first place, “Is it fair that Federal revenues should have to assume liability for the whole of the administrative charges which have hitherto been borne by the Government of India?” This question may be stated in another form as follows: “Will the new entrants into the Federation, viz., the Indian States, have a sufficient interest in the objects of such expenditure to justify their bearing, as members of the Federation, proportionate share in the whole of it?”

This is a question which can hardly be answered according to any *a priori* principles. In order to provide an answer it would be necessary to examine in detail the purposes on which the money under each head is spent. It is clearly an issue on which it will be right to allow the Indian States the fullest hearing and to ensure them an impartial decision. If it is held that any part of the expenditure is so essentially attributable to British India that it cannot be regarded as being properly Federal in character, then the balance could be redressed by allocating a further portion of income-tax receipts to cover such expenditure. An arrangement of this kind would not involve any departure from the form of a unified Federal Budget; but it is suggested that it would really be inconsistent with the true federal spirit to continue such distinctions in the Central Government's expenditure, and it is to be hoped that it would not be necessary to introduce them except possibly as a purely transitory measure.

A second fundamental question which will undoubtedly be raised in the constitutional discussions is whether, according to the plan shown in the specimen Budgets, the burden of finding revenue is fairly distributed among the members of the Federation. On this question it could, as has already been noted, be argued on behalf of the States that whereas the British Indian Provinces would, after Income-tax is removed, only be contributing to Federal expenditure through indirect taxes, the States would be contributing in two ways, first, indirectly through their share in indirect taxes, such as Customs and Salt duties, and secondly, by the direct payments by Indian States, amounting to Rs. 74 lakhs, which actually figure in the specimen Budgets given, and also by other methods which do not figure in the Budgets, *e.g.*, the present value of territories ceded, or capital payments made in the past, or the cost of the maintenance of State Forces which are available for Imperial purposes. As against this line of argument various considerations could be adduced from the British Indian side, as, for example, the value of the public works and other property which, according to the plan proposed in an earlier paragraph, would be taken over by the Federal authority without any corresponding share of debt. Here again the rejoinder from the States might be that they have contributed through indirect taxation in the past towards the resources from which these public works and property were acquired. However, no attempt will be made to set out in full here the arguments and counter arguments which might be advanced. This again is a subject on which the interests both of British India and the States must be ensured a fair hearing and an impartial adjudication. If as a result it is held that, according to the plan indicated in our specimen Budget, the burden would be unevenly distributed as between the Provinces and the States, then a proper balance could be restored in either one of two ways, either by appropriating in aid of Federal revenues an adequate portion of the Income-tax receipts to represent a burden on the British Indian Provinces proportionate to that borne by the States, or by relieving the States of their special burdens, *i.e.*, discontinuing their direct payments and compensating them for the contributions made in other ways.

It may be assumed that if an adjustment is considered necessary, the pressure from the side of the States will be for the adoption of the latter method. This would, however, still further increase the deficit on the Federal Budget, and thereby, perhaps, make it impossible to start the new Federal Government on a sound financial basis. It would therefore undoubtedly be preferable that any adjustment made should, if possible, take the form of continuing the payments by the States on the existing basis, and balancing them by taking a proportionate contribution from Income-tax levied in British India. It is, however, useless to disguise the fact that such an arrangement would not meet the claims of the States individually concerned, and that although it might be fair as between British India on the one side and the whole body of the States on the other, it could not be defended as an equitable solution of the grievances which the particular States in question entertain. For the contributions to which these proposed adjustments relate are not made by the States as a whole but by individual States and in widely varying proportions to their resources. Only three or four States have ceded territory in the past as the price of protection—about 47 States maintain forces recognised as being of actual or potential value for the defence of India, though in some cases the number of troops is exceedingly small. More than 200 States pay tributes and subventions, varying from small amounts representing a minute fraction of their annual revenue to the Mysore subvention of 24½ lakhs, which is locally regarded as a crushing burden on internal development and progress.

31. No attempt will be made in this memorandum to estimate precisely what the value of these claims of the States might be, but a few general observations on each class of claim may be of interest. An attempt is being made to estimate the present net value of the ceded territories. The results

are not yet available, but, from the progress made, it appears that, if compensation to the States concerned were to be limited to any ascertained genuine surplus from provincial sources of revenue, the financial consequences to federal revenues would not be disastrous.

Tributes, or "payments by Indian States" as shown in the foregoing specimen Budget, amount to 74 lakhs of rupees, but about 5 lakhs of them could continue to be demanded in any case as representing payment for tangible assets which are still in the hands of the States concerned. The loss from discontinuing genuine tributary payments would thus not exceed 70 lakhs and might be considerably further reduced if it were found possible to accept a suggestion made below. It has further to be remarked that the objections of States to continuance of these payments would not be based solely on the plea of their being supplementary to the ordinary scale of contribution by federal Units. There is the equally cogent plea that these payments denote relations of a feudal character and that the States will admit no such relationship between themselves and the Federal Government.

The annual cost of the forces maintained under the "reorganisation scheme" which replaced the system of Imperial Service Troops is in the neighbourhood of  $2\frac{1}{2}$  crores of rupees. But the maintenance of such forces is voluntary, and as it seems impracticable to meet any claim by the States on such a scale under the scheme of Federal finance envisaged in this memorandum, the only possible solutions appear to be (a) to make corresponding reduction in the Federal Army expenditure accompanied by such measures as might be considered necessary to enhance the efficiency and reliability of these States Forces, or (b) to inform the States concerned that, as the maintenance of the forces in question is in no way obligatory on them or essential to the defence requirements of India, it is impossible to take them into consideration for purposes of federal finance. It might, however, be necessary to make some departures from the general principle in the case of State Forces to which definite and important functions have been assigned under the existing dispositions of the General Staff.

On the other hand there are numerous instances in which States would not, unless existing arrangements were altered, be making their contributions to federal resources on the same full basis as other federal Units. This fact arises out of the favourable position occupied by maritime States and Kashmir in regard to customs duties and also from the varying degrees of immunity from the salt tax which States capable of producing salt in their territories enjoy under agreements concluded in the past with the Government of India. There could, in fact, under the scheme of federal finance outlined above, be only two classes of "deficit units" in the Federation. The first class would be the minor British Indian Provinces, which would have, for one reason or another, to be subsidised from federal revenues. The second would be the States who do not contribute on the same basis as other Units through customs duties or the salt tax. So far as the "minor Provinces" are concerned the charging of a deficit to Federal Provinces can in the most important cases be justified on special military and political grounds (*e.g.*, especially North-West Frontier Province and Baluchistan). But as regards the States it is obviously desirable that these deficiencies should be remedied by any practical means that can be devised. One method, which might in practice go a long way towards solving this problem, would be to set off against each other the two contrasting sets of claims. That is to say, the failure of a State to contribute its proper quota under customs or salt might be regarded as redeemed, *pro tanto*, by the present value of the contributions, financial, military or territorial, which it makes, or has made, and which are not expected of other federal Units. Even tributes might be utilised for adjustments of this nature, if all suspicion of feudal relationship between the State and the Federal Government could be avoided. They might continue to be payable to the Crown, which would assign them to the Federal Government as a matter of grace. It may well be

that along these lines the Federal Structure Committee will discern an equitable solution of the greater part of this difficult problem, and could adopt principles the detailed application of which might be left to some tribunal which would command the confidence of all concerned.

Whatever solution may be finally adopted it is reasonable that account should be taken of the practical requirements of the Federal Government. If substantial adjustments in favour of any State had to be made in full immediately on the inauguration of the Federal Constitution, the financial position of the Federal Government might be unduly strained. If, therefore, an adjustment has to be made it might be arranged that the process of adjustment should be spread over an appropriate period of years so as to give the Federal authority a chance to build up its financial position.

It is believed that it is only by the methods indicated above, *i.e.*, by offering to States a fair settlement based on the special circumstances of individual cases, that several States of the first importance could be attracted into the Federation. Moreover, it would otherwise be impossible to say to States with financial grievances that Federation is the only remedy for such grievances. Such a reply would be unjustified unless the terms of federation admit of reasonable adjustments of equitable claims, and, if adjustments are not made as a part of the terms of entry into federation, it is possible that **they may nevertheless** eventually have to be made in some other way no less embarrassing to the federal finances.

32. The points which have been referred to in the preceding paragraph are obviously matters for discussion at the Conference and eventually for detailed examination as part of a thorough financial enquiry. It suffices for our present purpose to have called attention to the main issues for adjustment. In the meanwhile it is felt that it ought to be possible to provide a practical scheme which is consistent with the general idea advanced in the first two paragraphs of this memorandum, *viz.*, the elimination of any distinction between Federal and Central finance, involving separate funds, separate budgets and consequent allocation.

33. The scheme as explained up to this point would leave the Federal authority practically dependent for meeting its expenditure on revenue from:—

- (a) Customs.
- (b) Salt.
- (c) Opium (a disappearing item).
- (d) Surplus profits, after meeting interest charges, of commercial undertakings.
- (e) The Government's share in the Reserve Bank profits.
- (f) Contributions from States.

Items (c), (d) and (e) are doubtful items, and in any case not of major importance. Item (f) is debatable for special reasons dealt with in the immediately preceding paragraphs. The result would be that almost entire reliance would be placed on revenue from Customs and Salt. Quite apart from the general considerations affecting the future prospects of customs duties which are dealt with later, it is clear that this plan of taxation is of a restricted and rigid nature and that there is no margin of elasticity.

On this ground it will be necessary to look for new sources of revenue to provide the necessary margin of financial strength to the Federal authority. It must be accepted as probable that if the plan of Federal finance involved demanding from the Indian States any surrender of their existing sources of revenue, it would be unlikely that such a plan would command general consent. It is therefore important to devise new sources of revenue which could be tapped without interfering with the existing systems of States' finance. Such sources might be found in certain articles of general consumption such as matches and possibly tobacco, either by the imposition of excise duties or vend fees, or by the establishment of some form of federal

monopoly. It is suggested that a "Federal Fund" might be created in this way, the taxes or profits collected from the consumption of such articles being collected centrally and distributed to all members of the Federation *per capita*, unless required for balancing the Federal Budget. Many of the Indian States, however, already tax tobacco and for this reason it may be found necessary to make taxation of tobacco a source of provincial revenue. Salt also might be treated as a Federal Fund tax, and if the growth of federal revenues from Customs or a reduction in expenditure rendered this possible, it could gradually be distributed to all members of the Federation in the same way.

A special difficulty in providing for elasticity arises from the fact that the other main source of taxation—Income-tax—will not, unless there is a change in the policy of the Indian States, be applicable to the whole of India. If it were not for this difficulty an obvious way of providing elasticity for the Federal Government would be to give that Government powers to levy a surcharge on taxes on income. It might, of course, be provided that this should be done as between the Federal authority and the British Indian Provinces, and that proportionate contributions should be levied from the States on some other basis acceptable to them, though this would introduce a serious lack of uniformity in the arrangements. It should be mentioned that at present Rule 19 of the Devolution Rules permits the levy of a contribution from any Local Government in case of emergency with the sanction of and subject to the conditions approved by the Secretary of State.

One further matter may be referred to here as illustrating the need for retaining in the Constitution some elasticity for the Federal Government's finances. It has been indicated in a separate memorandum that following the development of policy in many other countries, it may be found desirable in the future for the Federal Government to assume powers of control over the major road systems of the country and to finance their construction and maintenance. In that event it might be necessary to provide that all forms of taxation of the motor trade (some of which are now provincial) should be available to the Federal Government.

The method by which Federal Fund taxes should be divided among the units of the Federation would also require consideration. The paramount necessity for elasticity for the finances of the Federal Government, having in view the importance of the interests which depend upon it, would indicate that the conclusion must be (a) that Federal Fund taxes should primarily and unconditionally be at the disposal of the Federal Government; (b) that the proceeds of such taxes should only become available for the units of the Federation when the Federal Government is satisfied that it can make a permanent surrender of the whole or a portion of the proceeds of such taxes.

34. It has already been pointed out that the analysis made in the specimen Budgets set out in the preceding paragraphs is in a sense of a *pro forma* character, being based on past experience rather than on future probabilities. It has been directed mainly to one object—the illustration of the possibilities of a unitary Budget. In order to provide an estimate which is more in touch with realities, it is necessary to take into account two factors:—

(a) The present economic crisis and the slump in prices for all agricultural products.

(b) The possibility of change in fiscal policy and the operation of causes which may affect customs revenue—particularly the development of a protective effect in the case of certain of the existing customs duties.

35. As regards (a), to the extent that the fall in prices is permanent, e.g., if it is necessary to assume, a price level which is perhaps lower and certainly not higher than the pre-war level, it will be necessary to recast the prevailing ideas as to the present financial position of the Government of India. This, however, is a necessity of which account would have to be

taken in any case. It has nothing to do with the forths coming constitutional change, nor has it any special connection with the idea of Federation. It indicates a problem which the Government of India would have to face, and is not a problem of Federal finance as such. A fall in normal revenue, due to a fall in the value of India's production and purchasing power, would normally have to be met either by the development of new sources of taxation or by retrenchment in expenditure. According to present indications it would appear prudent to make provision for a permanent fall in revenue, and it will be for the Government of India to devise permanent measures for meeting it. Before the time comes for the discussion of a practical financial plan it will be necessary to furnish carefully prepared estimates of the revenue and expenditure to be expected in the opening years of the new constitution. No attempt will be made to do this in the present memorandum, but a supplementary note will be forwarded when the revenue results of the first four months of the current year are available. In the meanwhile a general review of the past development and future prospects of the two main heads, Customs and Income-tax, have been prepared by the Central Board of Revenue and are attached as Appendices to this memorandum.

36. As regards (b), it is clearly necessary in planning a scheme of Federal finance to take into account the possibility that under the new constitution fiscal policy may assume an aspect of more drastic and less discriminating protection. Apart from this, it is also necessary to take into account that certain major elements in the present customs revenue may become of decreasing importance owing to the protective effects of the duties on which they depend. Notable instances of this are the import duties on sugar (estimated to produce over Rs. 11 crores in the present Budget) and the import duties on cotton piece-goods. It is possible that developments affecting existing taxes and the intensification of protective policy might seriously upset the balance of the existing fiscal system, *e.g.*, customs revenue might decline while income-tax receipts might correspondingly increase. In this connection it cannot be ignored that, as has already been pointed out, the reluctance of the Indian States to come into line with British India as regards Income-tax may prove a hampering factor in the future development of Federal finance in India. In other words, in order to provide a properly balanced system of finance for the Federal Government, it would appear on principle desirable that the Federal Government should be able to rely to some extent at least on the expanding possibilities of sources of direct taxation such as Income-tax.

37. It is not profitable at this stage to do more than call attention to this last-mentioned factor, and as has already been indicated, no attempt will be made in this memorandum to translate into figures the adjustments which may be necessary to meet the possible changes referred to under (a) and (b) above. What can be said at present reduces itself to the following general statements.

As regards (a), it will be necessary for the Government of India by some means or other to adjust its present expenditure to the probable future level of the existing sources of taxation, which, according to our proposals, are to form the mainstay of Federal revenue. If this is not done the Federal authority cannot be set up on a sound foundation, nor could the Indian States be expected willingly to join the Federation.

As regards (b), it will be for the new Federal authority to regulate its policy according to the need for providing a balanced Budget. If, for example, protective import duties on a prohibitive scale are imposed on articles the import of which has in the past provided an important source of revenue, it will be necessary for the Federal authority to provide revenue from other sources.

The point which stands out from the above reflections is the necessity, to which attention has already been called, for the Federal authority to have some elasticity as regards sources of revenue. In fact, it seems clear

that it would be unwise to adopt any form of constitution which would permanently fix the financial basis for the Federation in a rigid and restricted way. Time may bring about a change of opinion in the States about various forms of revenue, and necessity may enforce great changes in policy. Some provision for review of the distribution of sources of revenue appears necessary. For the immediate future we have made certain suggestions as regards such sources in a proposal for the creation of "Federal fund taxes." Whether it would be possible to add to these such forms of taxation as death duties must be a matter for consideration. It would appear necessary that these questions should receive closer consideration in the detailed financial enquiry which should follow the settlement of a general constitutional plan. It is of the greatest importance that these matters should be examined in a realistic way, so that all parties may understand what are likely to be the necessities of the future.

38. We have already referred to another possible factor which may affect the financial position of a future Federal authority, namely, the claims to financial adjustments by the Indian States.

In making that reference we have dealt principally with one class of claims only, *viz.*, the claims to adjustments in respect of direct payments and other consideration given by certain States as a result of past treaties.

There are, however, claims and matters for adjustment in other fields also.

It is not within the scope of this memorandum to discuss in detail these various issues. But, inasmuch as they must be adjusted before the financial position of the Federal authority can accurately be gauged, it is necessary to make some reference to them.

Generally speaking, on behalf of British India it can be argued that, whatever might be the claims to a favourable adjustment of individual States, the position hitherto has not been one in which on balance the Indian States have contributed more than what is a fair equivalent for the benefits which they have received, or, in other words, that the taxpayers of British India as a whole have not been relieved at the cost of burdens inequitably imposed upon the States as a whole. But it is obviously necessary that the special claims and grievances of the States should receive fair examination as a preliminary to the constitution of a Federal authority or to the relinquishment by the British Government of any part of the responsibility or fiduciary position which it has hitherto held in relation to the States. On the other hand, it is to be hoped that the States will reciprocate by taking a fair and broadminded view of the position.

For the purpose of any examination of the claims of Indian States it is suggested that a distinction must be drawn between the following different classes of claims:—

(a) Individual claims of certain maritime States to specially favourable arrangements in connection with which a difference of opinion between the Government of India and the State concerned exists as to the proper interpretation of existing treaties and arrangements (*e.g.*, the case of Nawanagar and Baroda).

It is suggested that these disputes should be settled independently of the constitutional discussion and prior to any constitutional change in the Government of India.

(b) The claims of those States which in one form or another (Tribute, ceded territories, &c.) now make contributions to the Government of India. It is suggested that the *general position* as regards these claims must be considered in the constitutional discussions, though arrangements might be made for their decision by some sort of independent arbitral tribunal.

(c) The general position of the maritime States and Kashmir in relation to their contribution to Federal expenditure.

(d) The general position of States which enjoy some measure of immunity in regard to the Indian Salt Tax.

It is suggested that (c) and (d) must be reviewed and adjusted as part of the constitutional discussions at the Round Table Conference.

(e) The general claim of the States to a share in indirect revenues such as Customs and Salt receipts, and to participate in any profits accruing from Railways, Coinage and Currency and Posts and Telegraphs.

It is suggested that this claim has become merged in the Federal issue.

As regards (c), the very peculiar position of the maritime States has already been before the Federal Structure Sub-Committee. The specimen Budgets which we have given above are drawn up on the basis of a continuance of the existing arrangements, *i.e.*, that the maritime States retain (a) customs duties on goods imported for consumption in their own territories and (b) also in certain cases a share of the duty on goods passing into British India. While existing treaties cannot be ignored, it would of course be illogical to allow the maritime States to enter the Federation and still retain both (a) and (b) for their own purposes without making a fair contribution in other ways to Federal revenues.

39. The conclusions suggested by the considerations set out in the preceding paragraphs may perhaps be stated shortly as follows:—

There appears to be no reason why a sound system of Federal finance, commanding the general agreement of all possible parties to the Federation, should not be devised provided that—

First, the necessary adjustments referred to under (a) in para. 34 are definitely made.

Secondly, that the Indian States are not called upon, as a consequence of joining the Federation, to sacrifice any of their previous sources of revenue in order to balance the Federal Budget.

Thirdly, that the Indian States are prepared to deal in a fair and broad-minded way with the settlement of issues arising out of existing treaties.

Fourthly, that a reasonable agreement is reached as to what will be available as "Federal Fund taxes" so as to provide an adequate margin of elasticity to the revenues of the Federal authority.

## PART II.—*Some Subsidiary Financial Questions.*

40. *Powers of taxation.*—One of the most important questions which arises in any scheme for federal finance is the determination of the respective powers of taxation of the Central Government and the Units of the Federation. At present the Provincial Governments in British India have powers of taxation in connection with matters classified as "Provincial," subject, however, to the provisions of the Scheduled Taxes Rules. Those Rules specify in two schedules the matters in respect of which Local Governments and local bodies may legislate for taxation purposes without previous sanction of the Governor-General, the consequence being that in all other matters previous sanction is required. Furthermore, No. 47 of the list of Central subjects in Schedule I to Rule 3 of the Devolution Rules classifies as "Central" "all other matters not included among Provincial subjects under Part II of the Schedule." The net result is that at present the residuary powers of taxation rest with the Central Government, and apart from certain matters specified by Statutory Rule, the Local Governments' powers of legislation for taxation purposes are subject to the previous sanction of the Governor-General. In the Government of India's Despatch on Constitutional Reforms it was assumed that the residuary powers of taxation would continue to be Central, but if a Federation is formed which brings in new members, the Indian States,



which have independent powers of taxation within their own territories, the Round Table Conference will no doubt re-examine the question in the light of the new developments in prospect.

If the decision of the Conference were to be that in these circumstances the residuary powers of taxation should belong to the Units of the Federation, the list of subjects reserved as sources of revenue to the Federal Government would presumably be specified in the Constitution. In that event, so far as financial arrangements are concerned, there would be no need of any separate list of "Provincial" subjects, and all that need be specified in the Constitution would be the scope and powers of the Federal Government. Several practical points would, however, arise, particularly the question of what control, if any, should be exercised by the Federal Government. The position of the Indian States will inevitably differ in certain respects from that of the Provinces. Many of the States, for instance, already impose customs duties on their frontiers; others impose Income-tax, but neither of these forms of taxation is universal among the States. Now although it may be theoretically desirable that there should be no internal customs barriers between members of the Federation, and that Income-tax should be levied at uniform rates throughout the Federation, it must be recognised that such an ideal arrangement could not be brought about without the voluntary co-operation of the Indian States, and that, while maritime customs and land customs on the frontiers of India\* would become Federal sources of revenue, internal customs duties could still be imposed by the States under their independent powers. It would, however, be a retrograde step to allow the British Indian Provinces to impose customs duties on their frontiers, which would have the effect of hampering internal trade and of prejudicing the Federal revenues from maritime customs. It appears desirable therefore that the Federal Government should have powers of control over the British Indian Provinces to prevent the introduction of such a policy. A second form of control—in some respects analogous to that just mentioned—which it appears desirable to retain for the Federal Government is that over Provincial or Local taxation mainly in connection with terminal taxes or octroi for the purpose of safeguarding (a) Federal sources of taxation, and (b) international obligations. Similar control should be retained over taxation in Indian States, provided that it does not infringe powers which they exercise at present. A third restriction might be added on the powers of Indian States, Provincial Governments, or local bodies to impose any taxation on property belonging to the Federal Government (*cf.* Section 125 of the Canadian Act of 1867 and Section 114 of the Australian Act of 1900).

The above suggestions indicate the nature of the control which it might be necessary to retain even if the residuary powers of taxation were conferred upon the units of the Federation, the object being to give to the Provinces and to local bodies as free a hand as possible in taxation subject to a few overriding principles. The position *vis-à-vis* the States raises political issues which the Conference will no doubt consider.

The necessity, however, of securing sufficient elasticity to the finances of the Federal Government, which has been discussed in para. 33, has of course a most important bearing upon the question whether the grant of residuary powers to the Units of the Federation is practicable or desirable.

41. *Position of the Provinces.*—Certain special points arise in connection with the position of the Provinces before the unqualified introduction of a scheme such as has been outlined in the first part of this memorandum could be accepted. While the present economic depression and the sensational fall in the prices of agricultural products has created serious financial embarrassment for all the Provinces, the degree of embarrass-

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\* Subject in each case to such special adjustments as may perhaps be made with maritime States and Kashmir.

ment varies and difficulties of some have become extreme. The latest information, which has been obtained after discussion with representatives of all the Provinces, is being communicated separately and it will be one of the matters for consideration whether a special Committee of Enquiry is necessary to suggest preliminary adjustments in order that all the Provinces may start on their new career with a fair chance. Apart, however, from this major question of a general adjustment, the following special matters will require examination:—

(1) The Finance Department have suggested in the memorandum on classification of subjects that the logical development as regards the audit and account of Provincial transactions is that they should become Provincial. This view is not inconsistent with a gradual development and with practical arrangements which might be made provisionally or even permanently in agreement with the Provinces by which in substance the existing arrangement will continue, but it does mean that the Provinces will pay for the cost of their own accounts and audit. At present this is a Central liability, but it is important to create a direct interest on the part of the Provinces in this work, even if the whole continues to be organised by the Central authority as at present. This will be achieved when they have to take over the cost. Such a transfer will throw upon the Provinces an increased liability of about 66 lakhs, and in the present state of their finances it is hardly possible to expect them to meet this addition to their charges.

It was proposed in Sir Walter Layton's scheme that an adjustment should be made between the Centre and the Provinces in respect of the duty on imported foreign liquor in excess of 30 per cent. and commercial stamps, the Central Government surrendering the former, estimated to produce about 1½ crores of revenue, and taking over the latter, which should yield an equivalent amount. The Government of India pointed out in their Despatch on Constitutional Reforms that, while the total revenues from these two sources were roughly equal, so that the interchange was a matter of indifference to the Central Government, the case was by no means the same for individual Provinces, as the receipts in any particular Province from the two sources might vary widely. An alternative suggestion would be that if the Provinces take over the liability for accounts and audit, they should retain the proceeds of commercial stamps. The arrangements for the duty on imported foreign liquor can be considered independently as a purely administrative matter. Considered as such, there is much to be said for an arrangement of the nature proposed by Sir W. Layton which followed the Government of India's own suggestion. The details, however, are complicated and are still under examination with the Provinces. The matter is of little constitutional importance, but, if, as is hoped, a satisfactory scheme can be worked out, some additional financial help might be provided in this way for the Provinces as a set-off against the liability for accounts and audit.

(2) In para. 62 of the Government of India's Despatch on Constitutional Reforms, it was pointed out that the Provinces at present receive under Devolution Rule 15 a share (at three pies in the rupee) of the tax upon new incomes brought under assessment in any year as compared with the basic year 1920-1. Under this arrangement, which was intended to benefit the industrial Provinces, the most unexpected results have occurred (see the Table printed on page 60 of the Government of India's Despatch). Bengal and Bombay have received nothing; whereas Burma, Assam, Madras, and Bihar have received considerable and increasing sums. The practical difficulty in merely wiping out this arrangement and starting with a clean sheet is that for small Provinces the loss of this revenue, if not compensated by any immediate distribution of Income-tax, would be a serious matter, and so far as Assam is concerned would completely dislocate her finances. If there is to be no general readjustment and so far as possible the *status quo* is to be adopted, it might be the best plan to continue the assignments as on the last year (or last three-year period)

before the date of Federation, until they are absorbed in the release of Income-tax by the Centre to the Provinces.

(3) A decision will have to be arrived at as regards the proportions in which the various Provinces will share in the Income-tax surrendered. Sir Walter Layton's proposals contemplated only the surrender of "personal income-tax," and the proportions in which the Provinces would share in a distribution on this basis are given approximately in para. 66 of the Government of India's Despatch on Constitutional Reforms. On the whole it appears best to adhere to this basis of distribution for dealing with any share of the taxes on income which is likely to be available for relinquishment to the Provinces. The amount so available will for many years to come represent only a minor proportion of the total revenue from this source, since the existing liabilities for pre-Federation unallocated debt and pensions will only gradually diminish; that is to say, it will be very many years before the amount which is available for distribution will be more than the amount calculated on the basis of personal Income-tax. While this basis of distribution is suggested, it is considered that this is a matter on which the Provinces should be given an opportunity for expressing their views, and if a special financial committee is to be appointed this question might be specifically referred to such committee.

In dealing with this subject it is necessary to point out that the distinction between "personal" Income-tax and general Income-tax is in a sense misleading. Strictly speaking, all income may in the end become personal income, and the whole of the taxes, which are now, under the Indian system, included as taxes on income, may become "personal income-taxes" with the sole exception of the Super-tax payable by companies, which is really a corporation tax. Apart from this, the difference in any year between the total taxes on income and that amount which can be regarded as personal Income-tax in India would represent the tax on the undistributed profits of companies and on that portion of the profits which is distributed to persons not liable to Indian Income-tax, but from which tax nevertheless is deducted at source. When the position is fully analysed in this way it appears that rather too much was made of the distinction in Sir Walter Layton's proposals. Moreover, if too great reliance is placed on this distinction for working out a practical scheme for distribution as between the Centre and the Provinces it may lead to really embarrassing results. Thus, for example, it might happen that in some particular year the total body of companies in India might retain undistributed a very large proportion of their profits earned in that particular year and transfer these to reserve, and that then in a subsequent year when profits were low, substantial dividends might be paid from these reserves. In such a case, if the scheme of distribution were an allocation of personal taxes on income to the Provinces and of the balance of taxes on income collected to the Centre, the Central authority would in the earlier year, in the hypothetical instance given, have retained a large share of the tax, while in the later year it might have to distribute to the Provinces as their share in "personal" Income-tax a larger amount than was actually earned in that year, so that the Centre itself might be actually out of pocket. Nevertheless, as affording a rough and ready basis for distribution among the Provinces, the classification of part of the taxes collected in any year as "personal income-tax" is one of value.

42. *Borrowing by the Units of the Federation.*—The borrowing of Provincial Governments at present is governed by Section 30 (1) (A) of the Government of India Act and the Local Government Borrowing Rules made under this Section and by Devolution Rule 25 regulating advances by the Government of India to Local Governments. The actual practice and the terms on which advances are ordinarily given by the Central Government to Local Governments have been set forth in the rules governing the Provincial Loans Fund, which have received the approval of the Secretary of State in Council, and have, therefore, to some extent limited the fuller powers which the Government of India enjoyed under Devolution Rule 25.

The position regarding the Indian States is set forth in the Government of India, Foreign and Political Department Resolution No. F. 170 R. 29, dated the 20th May 1930, the relevant portions of which are given below:—

“(1) It is very desirable in the interests of the Government of India and in its own interests that a State intending to issue a public loan should give information beforehand of its intention to do so, in order to give the Government of India an opportunity of offering friendly advice on the subject, if necessary. This will not apply to the case of short loans for temporary purposes only from banks recognised for this purpose by the Government of India.

“(2) European British subjects are already legally forbidden to make loans to Ruling Princes and Chiefs without the previous consent in writing of the Secretary of State in Council or of the Governor-General in Council or of a Local Government. The previous concurrence of the Government of India is required by States entering into loan transactions with alien persons or firms. The term ‘alien’ is not applicable to British Indian subjects or subjects of other Indian States.

“(3) Loans by one State to another require the consent of the Government of India.”

The Indian States, therefore, have the right to issue public loans in India without the sanction of the Government of India, but they cannot issue external loans without the sanction of the Secretary of State. The Provincial Governments, however, have to obtain the sanction of the Governor-General in Council for loans raised in India and of the Secretary of State for loans raised outside India.

The position which will arise after Federation raises important political as well as financial issues which will need full discussion at the Conference and further examination in detail by a special Finance Committee. They can only be lightly touched on here.

The position was fully dealt with in the Report of the Statutory Commission (Vol. II, paras. 189 and 311) and in the Government of India Despatch on proposals for Constitutional Reforms (paras. 54 and 68).

The views expressed in the latter need no modification in substance. It is merely necessary to consider whether they have in any respect to be modified or expanded having regard to—

- (a) the plan of responsibility at the Centre;
- (b) recent experience;
- (c) the plan for an all-India Federation to include the Indian States.

Some account is taken of these questions in the following remarks, which are not intended to be exhaustive and must be read together with the fuller examination contained in the passages from the Statutory Commission's Report and the Government of India Despatch to which reference has been made above.

(1) *Co-ordination of borrowing.*—The very great importance of this, in the general interests of the Federation, was emphasised in the passages referred to. In the absence of such co-ordination the public issues of the Units and of the Federal Government might not be regulated so as to obtain the required Funds at the lowest possible rate of interest and the burden of the debt charges of the Federation as a whole might become unnecessarily increased. As the loan operations of the Federal Government will be on a much larger scale and of much greater importance than those of the Units it is only reasonable that some powers of control should be reserved to the Federal Government. The powers statutorily given to the Federal Government could take the shape of perfectly general control, but in practice such control should be limited to safeguarding the credit of the Federation. A possible arrangement would be to have a set of standard regulations, similar to the present Local Government Borrowing Rules,

which would lay down the purposes for which units of the Federation might ordinarily borrow, and provided that the declared purpose was within the scope of these Regulations, the grant or refusal of sanction should be decided on considerations of the general monetary and credit situation and of the general financial policy and position of the Federal Unit concerned. In order that the Federal Units might be in a position to meet without difficulty or delay a temporary shortage of funds, they could take ways and means advances from the Reserve Bank and the Imperial Bank of India without obtaining the previous sanction of the Federal Government.

(2) Past experience has shown that the Provincial Governments can usually borrow more cheaply by taking loans from the Provincial Loans Fund than by floating their own public loans, and in recent years it has become the normal method for the Central Government to undertake all public borrowing and to distribute a part of its borrowings to the Provinces. The experience of these years, and of the last year in particular, has, however, indicated certain real dangers which are inherent in this system. The present position of several of the Provinces shows that, if a Provincial Government is running at a deficit, the Central Government is practically forced to finance such a deficit. Though the Central Government could refuse to finance a deficit permanently from the Provincial Loans Fund and insist on a Provincial Government borrowing directly from the public such a line of action has never actually been taken. It is essential that if borrowing by the Provincial Governments from the Provincial Loans Fund is to continue it should be less automatic and that refusal of loans from the Fund should not be regarded as exceptional. It is important that Provincial Governments should be made to feel their own responsibilities, and nothing will bring the realities of responsibility home to them so much as a loss of credit which makes it impossible for them to borrow on their own account. Some alteration is therefore called for in the present system.

(3) In considering a practical scheme it must be remembered that the greater the control exercised by the Federal Government over borrowing by the Units of the Federation, the stronger would be the implication that the Units can look to the Federal Government to help them through difficulties. There are dangers in carrying the tutelary rôle too far.

Taking into account these conflicting considerations, it is suggested that, on balance, co-ordination of loan policy should, at least at the outset, be regarded as of major importance, but that restriction on the Provinces' freedom to borrow on their own credit should not be pushed to extremes. An arrangement containing the following features is put forward for consideration :—

(a) A retention of general power to control and co-ordinate Provincial borrowing by the Federal Government.

(b) A continuance of arrangements on the lines of the existing Provincial Loans Fund—but with a tightening of control. For example—

(i) if a Province has to take a loan to finance a deficit, no further loan from the Provincial Loans Fund should be made until the "deficit loan" has been repaid;

(ii) there should be some scrutiny of the general financial position of a Province applying for a loan, and loans should be refused if that position is unsatisfactory.

(c) The ultimate power to decide whether a loan is to be granted to rest with the Finance Minister of the Government of India working with a Board of Loan Commissioners. (*Cf.* para. 68 of the Government of India Despatch, page 69. The fact the Finance portfolio in the Central Government is, according to the conference plan, to be held by a responsible Finance Minister may modify the views of the Provincial Governments as recorded on pages 69 and 70 of the Government of India Despatch, and strengthens the reasons for the immediate appointment of a Board of Loans Commissioners.)

(d) All Provinces to keep their own balances independently with the Reserve Bank. (See below, para. 43.)

(e) All Provinces taking advantage of the Provincial Loans Fund arrangements to submit their accounts to an audit by the Auditor-General of India. This need not be more than a light test audit, sufficient to satisfy the Auditor-General—

(i) that the accounts are kept in a form sufficient to exhibit the true financial position;

(ii) that they are accurately kept.

It is not impossible that in the working of such arrangements a definite conflict might arise between the Finance Minister and a particular Province. It would then be open to such a Province to withdraw from the Provincial Loans Fund arrangements and stand on its own credit. But even after this the Provinces would still have to abide by some general regulations regarding borrowing.

As regards the Indian States, it is not possible at present to suggest more than that they should be allowed to become voluntary adherents to the Provincial Loans Fund arrangements, in which case they would submit to all regulations applicable to the Provinces. If they find that it pays them to borrow through the Provincial Loans Fund, they may be expected to submit to the closer regulations and supervision which would be a condition of their adherence.

43. *Balances of the Federal units.*—In para. 69 of their Despatch on Constitutional Reforms, the Government of India accepted the recommendations of the Indian Statutory Commission that any change in the present arrangements might be postponed until a Central Bank is created and that the Government of India should perform the service of banker for the Provincial Governments on a commercial basis and should not attempt to make undue profits out of the business. The Conference will no doubt consider whether the prospect of Federation requires that this question should be re-examined.

The Indian States, of course, keep their own balances. Under a Federal system comprising both Indian States and the Provincial Governments, it might be held undesirable for the Federal Government to perform the service of banker for some Units of the Federation while leaving other Units to make their own arrangements. The only Funds available for financing the ways and means of the Units would be Federal and objection might be raised to the employment of Federal Funds for financing the operations of certain Units only, even though arrangements might be made so that the Federal Government would make a reasonable profit out of the business. Moreover, the maintenance of separate balances by all the Units of the Federation would undoubtedly tend to increase the sense of financial responsibility of the Units, as the necessity for finding the actual cash to finance their administration would at once bring home to the Units the effects of their financial policy. On principle, therefore, there is much to be said for the maintenance of a separate cash balance by each Unit of the Federation. A scheme for the separation of the Provincial balances was drawn up in 1924, and it may be said that the separation could be effected without any serious administrative difficulty. The most important argument against separation is that it would be more expensive as the total amount of money lying idle would obviously be considerably larger than at present.

44. *Other points.*—On the assumption that the Lower House will be the House in which expenditure is voted and taxation initiated, it will clearly have to be fully representative of the Federation. A point to be discussed is whether the whole House will vote on all the expenditure and all proposals for taxation, or whether a "Committee" of the House representing the British Indian Provinces only will vote on "Central" expenditure and taxation Bills affecting British Indian Provinces only. This point was touched on in the Round Table Conference discussions and is referred to in

the quotation from Sir B. N. Mitra given in the footnote to para. 2, but the small content of the subjects which from the Budgetary point of view can be classified as Central makes the point of perhaps less importance than it was assumed to be then. Since the debt and pension liabilities are of a contractual character, there will, in fact, be very little "votable" central expenditure except the cost of the Income-tax Department, nor any money bills except those imposing Income-tax. Considerable emphasis was, moreover, laid at the Conference upon the united responsibility of the Federal Executive for all purposes, because all sections of the Federation would inevitably be concerned in the possible defeat of the Government on any of their proposals. In such an extreme instance the members of the House representing the States could not wholly stand aside. Although therefore it would be possible to devise arrangements by which portions of the House would sit in Committee to deal with matters of British Indian concern, this, it is suggested, could hardly take the form of a rigid constitutional provision and might, if found really necessary or desirable, be dealt with by convention.

45. One other matter may be referred to in conclusion. The present arrangement by which the duty on salt, the maximum postal rates and the rates of Income-tax and Super-tax are voted annually in the Finance Bill in addition to any items of new taxation in respect of customs might perhaps be reconsidered. After these rates have been voted once by the new Legislature, it may be beld that an annual Finance Bill is unnecessary unless there is to be some change in the existing rates of taxation.

## APPENDIX II.

### MEMORANDUM ON THE PRINCIPLES OF FEDERAL FINANCE PREPARED FOR THE LORD CHANCELLOR.

(This Memorandum is not in any sense an expression of the views of Government.)

#### I.—*Amalgamation of Federal and Central Finance.*

1. One of the provisional decisions reached at the Conference was that future Federal loans should be Federal, and that the existing Public Debt should be Central. It is doubtful, however, whether it would be practicable to give effect to this recommendation, as, apart from the fact that Central revenues would not be sufficient to cover the service of the existing debt, it is clear that such portion of the debt as is covered by assets that may be taken over by the Federal Government should be treated as Federal. The Government of India have made a careful analysis of the Public Debt (sterling and rupee), which amounts to 1,173,57.70 lakhs, and on the assumption that the Federal Government should take over with any particular asset the liabilities attached to that asset, and should also assume debt liability under certain other heads (loss on silver, share of discount and balance of commuted pensions), it is calculated that the interest-bearing debt which should be shouldered by the Federation amounts to 1,001,20.25 lakhs, the balance of 172,37.45 lakhs remaining a Central liability. On this basis it is suggested in the Government of India's memorandum that there should be a single Federal Budget in which a *pro forma* distinction should be made between Federal and Central charges, the latter to include the service of the debt allocated to Central, a portion of accrued superannuation allowances and pensions, as well as any other charges (to be determined) eventually classed as Central. These items would form a first charge on the Income-tax receipts of British India, the balance of which would be distributed to the Provinces. One feature of the scheme is that, as no Central debt will be incurred in the feature, and as an annual provision for debt reduction would be made, the Central debt would in course of time disappear.

2. It may be asked why, having gone so far, we should not go a step further and break down completely the distinction between Federal and Central finance? If this could be done, and if amalgamation could be effected without prejudicing the interests of any member of the Federation, not only would there be an immense gain in simplification, but important political results might follow. The Federation would stand for India and a possible source of friction in the future between British India and the States would be removed, for so long as the distinction between Federal and Central receipts remains, a conflict of interests is bound to arise when it becomes a question of imposing additional taxation or of reducing existing taxation. Further, so long as there is a distinction between Federal and Central finance it would, in practice, scarcely be possible for a State subject to become Finance Minister.

3. *Income-tax*.—An initial difficulty standing in the way of amalgamation lies in the fact that Income-tax is collected in British India only. Assuming, as we may, that income-tax legislation should be passed by the Federal Legislature, and that the tax should be collected by Federal agency, it is suggested that the whole of the net proceeds should at once be credited to the Provinces, the distribution to be made on a basis to be determined, even though as part of the financial settlements to be made between the Federal Government and the Provinces these proceeds, wholly or in part, were returned in the form of contributions to the Federal Government to enable that Government to meet its obligations. If this were done, Income-tax, except collections from Federal officers, would no longer be a Central receipt and one of the obstacles to the amalgamation of Federal and Central finance would be removed. If, however, the States, while maintaining the immunity of State subjects from a personal Income-tax, would agree to the imposition of a Corporation tax it would be possible, as a variant of this plan, to credit the proceeds of such a tax to Federal revenues, the rest being credited to the Provinces. A Corporation tax would be a growing head of revenue, and as it is highly desirable that Federal revenues should be as elastic as possible, this alternative is attractive, if the Princes would consent.

4. *The Public Debt*.—Another difficulty in the way of amalgamation arises in respect of the Public Debt. It is, however, suggested that the assumption by the Federation of responsibility for the existing debt would not prejudice the interests of the States and would involve no new obligation on State revenues. The debt is now charged on the "revenues of India" and these, under Section 20 (3) of the Government of India Act, include "all the territorial and other revenues of or arising in British India." As matters stand, therefore, State revenues form no part of the security, and it is desirable to make it clear that there is no intention of charging existing or future debts on these revenues. This could be done by defining in the new Constitution the "revenues of India," on which the existing debt would be charged, as including the revenues of the Federation as well as the revenues of British India.

5. If the whole of the existing debt be secured in this way the second obstacle to amalgamation would be removed. In so far as the burden on the Provinces is concerned, there is no essential difference between a system under which a portion of the existing debt would be described as Central, the amount required for the service of that debt being a first charge on Income-tax receipts (the rest going to the Provinces) and a system under which the whole Income-tax receipts would be credited to the Provinces, a portion being returned, in the form of contributions, to enable the Federal Government to balance its Budget.

6. As regards future debt, this might be charged on Federal revenues only and not on the revenues of India, but it is highly undesirable, in the interests of the Federation, that this should be done, as if any distinction be made in this respect between the security for existing and for future debts, or if the revenues on which future debts are charged be less than the revenues on which existing debts are charged, suspicion may arise in the



minds of investors both in India and abroad and future borrowing may be prejudiced.

7. It may be urged on behalf of British India that if Provincial revenues are to form part of the security for the future Public Debt of India, the internal revenues of the State members of the Federation should also form part of that security. Theoretically there may be some justification for this view, but it is to be hoped that it will not be pressed. After all, it is possible to exaggerate the importance of this question of security. The holder of Government paper is not in the position of the holder of a mortgage, who, in case of default, can obtain possession of the property on which his loan is secured. India has never yet been compelled—and, it is hoped, never will be compelled—to hypothecate as security for a loan a specific head of revenue, an outside receiver being appointed for the purpose. Although loans are legally charged on the revenues of India, the real security is the credit of the country, and this, in the future as in the past, will be judged, not by the amount of revenue collected, but by the extent to which Government consistently observes the canons of sound finance in presenting truly balanced Budgets, in avoiding excessive borrowing or borrowing for improper purposes, and in managing the currency on sound lines.

8. *Contributions from the Indian States.*—The contributions now made by certain States is a third obstacle standing in the way of amalgamation, although the amount involved is not considerable. These payments, which are available for the general expenditure of the Government of India, have hitherto been called Tributes, but this year it was decided to discontinue the use of this expression.

9. These contributions amount in the aggregate to more than Rs. 70 lakhs annually, and are now made by no less than 218 States. They range from Rs. 24,50,000 in the case of Mysore to Rs. 3 in the case of Ranasan, and they differ widely in origin, some being Tributes in the true sense of the word, others payments in lieu of the obligation to supply troops, while some are in the nature of quit rents or compensation for surrendered revenue.

10. The ideal course would be to abolish these contributions, but as matters stand the financial prospects of the Federation are so uncertain that this is difficult. Possibly at the outset the States concerned, if satisfied that the abolition of the contributions was not at present feasible, might agree that these payments should be directly credited to Federal revenues if, in return, they were assured, first, that should financial conditions then permit those contributions not earmarked for specific purposes would be abolished when the Federation was established, and secondly, that if this was found to be impossible, Federal surpluses should be used for the reduction and ultimate extinction of these payments. As Indian revenues respond very rapidly to an improvement in world conditions an assurance of this kind would be of great practical value. It will be remembered that after the introduction of the Reforms, which involved heavy contributions from the Provinces, it was the declared policy of Government to afford relief to the Provinces from Central surpluses, and that in pursuance of this policy Provincial contributions were finally extinguished a few years ago.

11. Should a solution on these lines not be accepted it will be necessary to devise some plan which while avoiding the treatment of these contributions as direct Federal receipts, would enable them to be used for general purposes.

12. If Income-tax, the Public Debt and contributions from States should be dealt with in the manner suggested above, the way would be clear for the complete amalgamation of Federal and Central finance.

## II.—Taxation.

13. Under the Scheduled Taxes Rules a Provincial Legislature may, without previous sanction, impose any of the taxes listed in Schedule I for:

the purposes of the Local Government, and may authorise any local authority to impose any of the taxes or tolls listed in Schedule II. Otherwise the previous sanction of the Government of India must be obtained.

14. An arrangement of this nature, even if the lists were considerably enlarged, would not be consistent with the conception of Provincial autonomy, and it would not be possible to provide that the previous sanction of the Federal Government to the imposition of any Provincial tax should be required. Should, therefore, any dispute arise in the future between the Federal and a Provincial Government as to the authority to impose any particular form of taxation, the matter could not be settled by an order of the Federal Government, but presumably would have to be referred to the Federal Court. That Court, however, could only adjudicate on the basis of a written constitution, and for this reason it is essential that the provisions embodied in the constitution should, so far as practicable, be precise and comprehensive.

15. The nature of these provisions might suitably form the subject of expert enquiry, and one of three alternatives might be adopted. The powers of the Federal Government might be limited to a number of specific taxes, the power to impose all other forms of taxation resting with the Provinces, but this, in view of the desirability of securing elasticity in the Federal revenues, is not recommended; secondly, all forms of taxation, existing and possible, might be classified in two lists; or, thirdly, a division of authority on more general lines might be laid down, the Federal Government being empowered to impose indirect taxation only, with certain specified exceptions, and the Provincial Governments being empowered to impose all forms of direct taxation and specified forms of indirect taxation. In all the circumstances the third alternative seems the best, but as economists differ as to what is a direct and what an indirect tax this plan may be found to be impracticable. But whether the second or the third alternative be adopted it would be necessary to provide for residuary powers. In this sphere it would seem appropriate that residuary powers should rest with the Federal Government, but if the political objections to this course be found to be insuperable, a possible solution (always provided that the third alternative is found to be practicable) would be to distinguish between residuary powers in regard to indirect and in regard to direct taxation, leaving the former with the Federal and the latter with the Provincial Governments.

16. In regard to the directly administered areas in British India which might be brought under the direct control of the Federal Government, it would seem to be sufficient to regulate powers of taxation by rules on the lines of the existing Scheduled Taxes Rules.

17. It is clear that the Federal Legislature cannot trench on the powers of the States in regard to direct taxation, and it is desirable that these should be explicitly stated. But a difficulty arises if any new form of indirect taxation—such as a Tobacco Excise—be imposed by the Federal Legislature, if in any of the States the tax is already levied. It would be unreasonable that a single State member of the Federation should be in a position to block a proposal of this kind, and it is desirable, therefore, to provide that the State tax should be replaced by the Federal tax on payment of suitable compensation.

18. But whatever powers of taxation be enjoyed by the units of the Federation, these powers should be subject to the overriding condition that they shall not be exercised—

(a) so as to conflict with international obligations undertaken by the Federal Government in commercial treaties or international Conventions;

(b) against the interest of the Federation as a whole;

(c) so as to affect injuriously any head of Federal revenue; and

(d) to tax the property of the Federal Government.

19. The limitation of powers under (a) would, of course, cover obligations inherited by the Federal Government. If the Federal Government desired to assume new obligations which might trench on the powers of the Provincial Governments and the States, it is an open question whether such obligations could be assumed only after the consent of Provincial Governments and the States had been obtained, or whether the Federal Government should be empowered to enter into commercial treaties or ratify international Conventions without such consent. This raises an important political issue which the Conference may have to consider separately.

20. The outstanding example under (b) is the imposition of inland customs duties, as this is the very negation of federation. Those inland States which at present levy customs duties cannot be expected to surrender this source of revenue without compensation, but so far as can be foreseen it would not be practicable to pay compensation in all cases, as the Federation would not be able to face the loss of revenue which this would involve.

21. As regards (c), no Unit of the Federation should be permitted, without the consent of the Federal Government, to levy a railway terminal tax on passengers or goods, as this might seriously affect railway revenues.

22. Condition (d) is based on the Canadian and Australian Acts and can scarcely be objected to. The immunity of Federal property from local taxation would extend to rates and cesses imposed by local authorities.

### III.—*Financial Relations with the States.*

23. As the Federal Legislature will be precluded from imposing any form of direct taxation in the States, the contributions which a State entering the Federation will make to Federal revenues will be limited to the proceeds of indirect taxation. New forms of indirect taxation of general application, such as the Tobacco Excise, may be imposed in the future, but as matters stand States would only contribute under the heads of Customs (including the kerosene and petrol excises) and Salt. As, however, the maritime States themselves collect and retain customs duties, such States would contribute nothing under this head, while the broad effect of the network of agreements concluded with those States which are capable of producing salt is that the non-producing States alone would contribute to the Salt revenues.

24. But in any case there can, it is suggested, be no doubt that if a State enters the Federation, the claim of that State to a share in the customs and Salt revenue is automatically extinguished. A number of difficult problems, especially in regard to contributions, maintenance of State forces and ceded territories, remain unsolved. If the States concerned agreed that their contributions should be dealt with in the manner suggested in Part II of these Notes the position would be greatly eased, but it is highly undesirable that the Federal Government should in the early years be required to deal with these matters. A prolonged enquiry into such claims and counter-claims might accentuate the cleavage between British India and the States and so militate against the best interests of the Federation.

25. In these circumstances, it is suggested that an attempt should be made to secure the assent of the Princes to a moratorium of 10 years. During that period claims and counter-claims would remain in abeyance. In this connection that portion of the Government of India's general memorandum on Federal finance which deals with the important question of the incidence of burdens as between British India and the States should be read. If the difficulty regarding contributions be overcome as already suggested, and if also in the case of the maritime States a settlement can be reached, it is to be hoped that, for the rest, claims and counter-claims might be allowed to lie dormant for 10 years.

26. *The Maritime States.*—There is also the difficult and complicated problem of the maritime States. We are not here concerned with the purely administrative question whether, if a maritime State entered the Federation, collection should be entrusted to Federal or to State agency, or whether,

if State agency be continued, this should be subject to Federal inspection or control, but with the question whether, on the financial side, the Conference can in any way assist in the solution of the problem. It is highly desirable that collections should be credited to Federal revenues, but if this be done compensation may have to be paid to each State. Clearly the Conference cannot enter into the merits of the dispute now pending between the Government of India and certain States, nor can it attempt to assess the amount of compensation payable in individual cases. The most that can be done is to endeavour to secure assent to the general principles that collection shall be credited to Federal revenues and that the claim of each State for compensation should be impartially settled.

#### IV.—*Borrowing and Balances.*

27. The nature of the arrangements to be made regarding Provincial borrowing depends upon the degree of financial independence that will be enjoyed by Provincial Governments, and this is a political issue of first importance.

28. We are not here concerned with Provincial independence on the administrative side, but if in the sphere of finance it be held that the Provincial Governments should be completely independent, that no power of intervention for the purpose of securing financial stability should be vested in the Governor, the Governor-General or the Federal Government, and that the Federal Government has no interest in or responsibility for a financial breakdown (a contingency which it would be foolish to ignore), then clearly the Provincial Government must be left free to borrow as it pleases in the open market.

29. On the other hand, the view may be held that if Provincial contributions figure in the scheme of Federal finance the solvency of a Province is a matter of direct interest to the Federal Government. Further, as the financial breakdown of a Province could not fail to affect the credit of the Federal Government, both in India and abroad, and so prejudice Federal borrowing, there can be little doubt that the Federal Government, whatever its constitutional responsibilities may be, would, in practice, have to come to the assistance of a bankrupt Province. Seeing, therefore, that excessive borrowing or borrowing for improper purposes must inevitably create an unsound financial position, some control over Provincial borrowing should rest with the Federal Government.

30. But whether or not the Provincial Governments be subject to Federal control in the issue of Federal loans, it is desirable, in the general interests of the Federation, that a Federal Loans Fund should be established, as if borrowing be co-ordinated competition in the markets is avoided and money obtained on more favourable terms. As, however, the Fund would be fed from Federal resources the Federal Government should be free to grant or withhold advances at its discretion, and if advances be made to impose such terms and conditions as it considers suitable. In this manner a real, though indirect, control over Provincial finance would be secured.

31. Until a Reserve Bank is established, it seems desirable that the Federal Government of India should continue to perform the service of banker for the Provincial Governments on a commercial basis and that Provincial balances should remain with the Federal Government.

#### V.—*Resources.*

32. There remains the important practical question whether the resources of the Federation and of the Provincial Governments will be sufficient to meet necessary expenditure and what financial adjustments should be made so that, so far as is practicable, the Federation and each Province shall start on an even keel. The Budgets of the current year, both Central and Provincial, have been so completely falsified, and the future is so uncertain that it will be exceedingly difficult to frame estimates of any value. The revenues of British India, Central and Provincial, have been seriously

affected, not only by the world economic crisis, but also by political unrest; drastic retrenchments and additional taxation are probable, and the possible creation of three new Governor's Provinces has to be taken into account. In these circumstances no useful purpose would be served by asking the Conference to consider this aspect of the problem. All that can be done is to entrust the work to an expert Committee which, in consultation with the Government of India and Provincial Governments, would, on the best material available, attempt to forecast the receipts and expenditure of the Federal and Provincial Governments and propose financial adjustments.

### APPENDIX III.

#### NOTE ON AN INDIAN FEDERAL COURT CIRCULATED BY THE CHAIRMAN.

1. In a Constitution created by the Federation of a number of separate political Units and providing for the distribution of powers between a central Legislature and Executive on one hand and the Legislatures and Executives of the Federal Units on the other, a Federal Court appears to be an essential element. Such a Court is needed to interpret Federal laws and compel obedience to them, and more particularly to interpret the Federal Constitution itself. The delimitation of the respective spheres of the Federal and the Provincial and State authorities, whether Legislative or Executive will be most conveniently entrusted to a Tribunal independent both of the Central, Provincial and State Governments, and it would in any event be required in order to prevent the mischief which might otherwise arise if the various High Courts and State Courts interpreted the Constitution in different senses, and thus made the law uncertain and ambiguous.

2. A Federal Court may exercise either an original or an appellate jurisdiction, or both. The jurisdiction which it exercises may be exclusive or shared with other courts. This jurisdiction may be confined to Federal matters alone or it may be exercised in whole or in part over other matters concurrently with Courts of the Federal Units. The Constitutions of the United States, of Canada and of Australia respectively show clearly that there is no universal type of Federal Tribunal.

3. The United States Constitution vests the judicial power of the United States (as distinct from that of the individual States) in one Supreme Court and in such inferior Courts as Congress may from time to time ordain and establish. Thus, the only Court actually created by the Constitution itself was the Supreme Court; but Congress has since created two (formerly three) categories of lower Federal Courts, *viz.*, District Courts and Circuit Courts of Appeals. The British North America Act, 1867, enacts that the Dominion Parliament may from time to time provide for the constitution, maintenance and organisation of a general Court of Appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada; and under this power a Canadian Supreme Court was created in 1875. The Commonwealth of Australia Constitution Act, 1900, vests the judicial power of the Commonwealth in a Federal Supreme Court, to be called the High Court of Australia, and in any such other Federal Courts as the Commonwealth Parliament may create and in such other Courts as it may invest with Federal jurisdiction.

4. In the United States, the Federal Courts exercise an exclusive jurisdiction in all cases arising under the Constitution and under Federal Statutes, and in certain other cases specified in the Constitution itself. They constitute a hierarchy of Courts which covers the whole country and is wholly separate from and independent of the State Courts. In Canada the same Courts deal both with Federal and Provincial matters, and an appeal lies to the Supreme Court from all other Courts. The Australian system.

stands midway between these two extremes. The High Court exercises, or can be empowered to exercise, an original jurisdiction in certain specified matters, including matters arising under the Constitution or involving its interpretation, and the Commonwealth Parliament is empowered not only to invest a State Court with an original Federal jurisdiction and to define that jurisdiction, but also to define the extent to which the jurisdiction of any Federal Court shall be exclusive of that which belongs or is invested in the State Courts. These matters are now dealt with by the Judiciary Act, 1903, passed under the above powers, but it is to be observed that a further Act of 1907 gave to the Federal Courts an exclusive jurisdiction in matters relating to the constitutional rights and powers of the Commonwealth and of the States *inter se*. The High Court also has an appellate jurisdiction in the case of appeals from any Federal Court or other Court exercising Federal jurisdiction and also from any State Court from which at the establishment of the Commonwealth an appeal lay to the Judicial Committee of the Privy Council. Generally speaking, therefore, the Australian High Court exercises an appellate jurisdiction both in Federal and in other matters, and it exercises an original jurisdiction in Federal matters concurrently with the State Courts, subject to the right of the Commonwealth Parliament to make the Federal jurisdiction, to such extent as the Statute may provide, an exclusive one.

5. The existence in India of a number of High Courts, most of them long established and all enjoying a high prestige, and the difficulty of setting up special Federal Courts in any but a few of the largest States, would seem (apart from any other consideration) to preclude any system based upon the United States model, i.e., a hierarchy of Federal Courts, both of first instance and of appeal, dealing exclusively with Federal matters and with a Federal Supreme Court at their head. On the other hand, the adoption of the Canadian system which would involve the establishment of an Indian Supreme Court to which an appeal lay in all matters, whether Federal or not, from all other Indian Courts, both High Courts and State Courts, appears to be open to certain objections. In the first place, in so litigious a country as India, a flood of appeals might overwhelm the Court at the outset of its career and detract its attention from its true function, that of interpreting the Constitution itself and laying down rules which may serve to guide the natural process of constitutional development. Secondly, it seems improbable that the States would be willing to concede a right of appeal from the State Courts on other than Federal matters to a Supreme Court which would necessarily have its seat in British India; and a Federal Supreme Court with an appellate jurisdiction of this kind limited to a portion only of the Federation might, by emphasizing the difference in status between two main component elements of the Federation, have the appearance of an instrument of division rather than of union. It is understood, however, that there is a strong demand for a Supreme Appellate Tribunal for British India, and it might be possible, if so desired, for the Federal Court to be enabled to sit for this purpose under another style and title; or possibly it might sit in two divisions, one to hear Federal appeals and the other British-Indian appeals in non-Federal matters.

6. On the assumption then that there will be only a single Federal Court, with a jurisdiction confined to Federal matters, the choice would lie between (1) giving the High Courts, or other specified Courts, in British India and the corresponding State Courts in the States an original jurisdiction in all, or practically all, Federal matters with a direct or ultimate right of appeal to the Federal Court, and (2), following the Australian model, giving the Federal Court an original jurisdiction in Federal matters, with power, however, to the Federal Legislature, if it should later on think fit, to invest the British Indian Courts and the corresponding State Courts with a Federal jurisdiction (with a right of appeal to the Federal Court), and to define the extent to which the jurisdiction so vested in any Court shall be exclusive of that which belongs to or is vested in those other Courts. On practical grounds the first alternative appears to be by far the more convenient, but

it would seem necessary as a corollary to provide that all appeals in British India in Federal matters shall go to the Federal Court instead of to the Privy Council, in order to obviate the difficulty which at one time arose in Australia, when on important issues the Privy Council and the Australian High Court gave conflicting judgments, according as an appeal has gone to one or the other tribunal. It is a matter for consideration whether there should be a right of appeal from the Federal Court to the Privy Council, or whether in any matter affecting the interpretation of the Constitution itself, the decision of the Supreme Court, as in practice in Australia, should be final. The question of the protection of minorities does not, however, arise in Australia, and the precedent of Canada, where the question is still a vital one, seems to point to the necessity for retaining the Privy Council's jurisdiction.

7. The above suggestions contemplate a Federal Court exercising in general only an appellate jurisdiction in Federal matters, both from the British Indian Courts and from the corresponding State Courts. There are, however, a certain number of subjects with regard to which it would be necessary to consider whether the Federal Court should not also possess an original jurisdiction. Among the matters in which the Australian High Court has or has been given by the Commonwealth Parliament an original jurisdiction are those (1) arising under any Treaty; (2) affecting Consuls or other representatives of other countries; (3) in which the Commonwealth is a party; (4) between States, or between residents of different States, or between a State and a resident of another State; (5) in which a Writ of Mandamus or prohibition or an Injunction is sought against an officer of the Commonwealth; (6) arising under Admiralty or maritime jurisdiction; and (7) relating to the same subject-matter claimed under the laws of different States. These are not dissimilar to those matters which are within the exclusive jurisdiction of the Federal Courts of the United States; but in Australia, the State Courts have a concurrent jurisdiction with regard to them, save in so far as the Commonwealth Parliament has excluded that jurisdiction by virtue of powers reserved to it by the Constitution. Whether or not it might be desirable to reserve an analogous power in the future to the Indian Federal Legislature, it seems clear that no good reason exists for depriving the British-Indian Courts or the Courts of the States of original jurisdiction in any of the above matters (with perhaps one exception) when they arise in the Federal sphere, subject always to the right of appeal to the Federal Court. The one exception which will require consideration is that of disputes in Federal matters between the Federal Units themselves or between the Federation as a whole and one of the Federal Units. Presumably the Provinces of British India will, with their increased autonomy and their position as Units in the Federation, become invested with a juristic personality and able to sue or be sued by some form of legal process. It would seem also a necessary consequence of federation that in disputes between Province and State in Federal matters the Princes would have to submit in some sense or other to the jurisdiction of a Federal judiciary, just as they will have to concede a right of appeal in Federal matters from the Courts of their States.

8. For disputes such as those mentioned above (*i.e.*, between Federation, State and Province *inter se*) neither existing British-Indian Courts nor State Courts would be an appropriate or indeed a possible tribunal. It can scarcely be doubted that such disputes will from time to time arise, and it seems necessary that they should be cognizable only in the Federal Court itself. Difficulties may well occur in this connection with the States, but should not be insuperable, at any rate so far as regards disputes between State and Province. More difficult problems, however, are likely to arise in relation to the decision of disputes between the Federation itself and one of the States.

9. By the "Federal matters" over which the Federal Court would have jurisdiction is meant all cases arising under the Federal Constitution or under Federal laws, and such other cases as may be regarded as proper to

be determined by such a tribunal. It would include the interpretation of the Constitution, and as a necessary consequence implies a jurisdiction to declare any law passed by the Federal Legislature or the law-making body of any Federal Unit to be *ultra vires*. This is inevitable in the case of any Constitution providing for a distribution of powers between different Legislatures; but if the retention in part of the existing machinery in British India which so commended itself to the Statutory Commission, whereby the prior assent of the Governor-General to Provincial legislation operates over a wide field to prevent questions of *ultra vires* arising, were acceptable to British-Indian opinion the difficulty might, in British India at any rate, be confined within a reasonably small compass. In the States it will have to be faced.

10. The constitution of the Court would have to be settled later. It would presumably have a Chief Justice for its president, with (say) four puisno judges; but the number would depend upon the ultimate extent of the Court's jurisdiction, if any, in non-Federal matters. The number might be fixed by the Constitution with a power to the Federal Legislature to increase it subsequently. It would seem that the appointments to the Court should rest with the Crown. The functions of the Court will be of such supreme importance to the new Federation, especially in its early days, that nothing could safely be omitted which might tend to increase its prestige or reputation for absolute impartiality. It is thought that the Constitution would have to provide that the judges of the Federal Court held office during good behaviour and with adequate safeguards for their independence. The High Court judges in British India at present hold during pleasure, but if they are in future to be appointed otherwise than by the Secretary of State, it seems clear that this tenure will have to be altered.

11. Since it is contemplated in this note that the jurisdiction of the Federal Court will be practically all appellate, the question of the manner in which its judgments will be enforced need cause none of the difficulties which might arise in the case of an original jurisdiction. The Federal Court will either uphold or reverse the decision of a lower Court and the case will then be remitted to the latter to be finally disposed of. In the event of the Federal Court being invested with an original jurisdiction in cases between Province and Province, or Province and State, it ought not to be assumed that the Government of the Province or State would ever make default in implementing a judgment rendered, even though execution could not issue against it; but if so unlikely a thing should happen, it is assumed that the Federal Government or, in the last resort, the Viceroy would have to take action to compel obedience.

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## APPENDIX IV.

### NOTE ON EXPORT DUTIES BY SIR PROVASH CHUNDER MITTER.

Both in my opening speech and also in my speech when dealing with the Report of the Finance sub-Committee I suggested that export duties should not form a source of Federal revenue, at any rate as a permanent item in the Constitution. As this point was not specifically dealt with in the Report of the Finance sub-Committee, and as the point is not only of supreme importance to my Province, but also a point of great general importance, I desire to record the following Note from which it will appear that this head of revenue means practically a taxation on Bengal only.



In the year 1929-30 the total amount realised from export duties was as follows:—

	Rs. (lakhs).	Rs. (lakhs).
Hides and Skins . . . . .	...	35·36
Jute—		
(a) Raw . . . . .	197·22	...
(b) Manufactured . . . . .	266·45	463·67
Rice . . . . .	...	116·91
		(Mostly Burma).

The export duty of 116·91 lakhs of rupees from rice being mostly from Burma, after the separation of that Province the collections on that head will cease to be of importance for Federal India. After such separation the total income from export duties will be 499·2 lakhs of rupees, out of which Bengal jute will contribute 463·67 lakhs of rupees, or over 92 per cent. Bengal is also concerned with the export duty on hides, and skins, and rice, but as I have already observed, the income from these commodities after the separation of Burma will be very small.

In this connection I would refer to a short history of the export duty on jute. This export duty was for the first time imposed with effect from 1st March, 1916, presumably to meet the heavy demands due to the War. The original duty was on raw jute other than cuttings, at a general rate of Rs. 2-4-0 per bale of 400 lbs., equivalent approximately to an *ad valorem* duty of 5 per cent. The duty on cuttings was fixed at 10 annas per bale. Simultaneously, an export duty of Rs. 16 per ton was imposed on hessians and Rs. 10 per ton on sacking, corresponding to the raw jute rate on the material used in the manufacture of each class of goods. With effect from 1st March, 1917, these rates were doubled, and now stand at Rs. 4-8-0 and Re. 1-4-0 for raw jute and cuttings, and Rs. 32 and Rs. 20 for hessians and sacking respectively. The amount realised by this duty in 1922-23 was £2,195,000 (about 285 lakhs and 35,000 rupees).

It was hoped that after the requirements of the War were over this duty would be abolished, but this duty was never abolished even during the prosperous years of the Budget of the Government of India. It may be mentioned that during the War raw jute, as also the jute trade, was in a very prosperous condition, because of the need for gunny bags for war purposes. In recent times and even before the world depression the jute trade was not very prosperous, so far, at any rate, as the agriculturist's interest in the business is concerned.

I am, however, not so much concerned with passing prosperity or depression in the jute business. My main point is the injustice and iniquity of keeping jute as a large source of revenue, as also the general objections about imposing a duty on export trade. From the practical point of view retention of export duty as an item of taxation will mean that export duty on jute will practically be the main source of income from exports, at any rate, the predominant source of income.

I submit that for the following reasons, amongst others, export duty should not be retained in the Constitution.

To retain the export duty on jute will be a piece of discriminatory taxation. This cannot be justified for reasons of justice and fair play between the constituent units of a federation. In this connection I would draw attention to Section 51 (ii) of the Australian Constitution which empowers the Federal Parliament to make laws with respect to "taxation but so as not to discriminate between States or parts of States."

To retain any export duty is against the precedent laid down in the Constitution of the United States of America, to which I have already drawn the attention of the sub-Committee in my speech. That Section (Section 9, sub-section 5) runs as follows:—

"No tax or duty shall be laid on articles exported from any State."

I may add that, generally speaking, export duty is not considered to be a very satisfactory source of taxation. At any rate it should not be included as a source of taxation without elaborate enquiries, which it is not possible to make within the time at the disposal of the Expert Committee. It is true that the Taxation Enquiry Committee's Report dealt with this matter. That Committee, however, was dealing with the sources of British India as a unitary form of government. We are now concerned with a Federation, consisting of a large number of Indian States and a large number of Indian Provinces. The sources of taxation now contemplated will not be sources of taxation for a unitary form of government.

As already observed the reasons given by the Report of the Taxation Enquiry Committee should no longer be held to be applicable, but I may just mention that one reason dealt with in that Report was that jute is a monopoly, and ordinary objections to the imposition of an export duty would not apply with the same force to the imposition of an export duty on a monopoly like jute. Without entering into elaborate details, I propose to deal shortly with this point.

In the first place I am not prepared to admit that jute, under all circumstances and for all times, has the advantage of a monopoly. In such periods when the world's demand for jute is less than the supply of jute, and when the agriculturists grow a larger quantity of jute than can be absorbed by the world, that commodity cannot be considered to be a monopoly, at any rate so far as the agriculturist is concerned.

We are, however, proposing to include export duty as a permanent item of taxation. Therefore I submit that we are not justified in doing so without very elaborate enquiries.

In the next place I submit that if jute be really a monopoly, it is a monopoly practically of one Province, namely Bengal, and for the purposes of federation every canon of justice and fair play ought to lead one to the conclusion that it should be enjoyed not by all the units of the Federation, but by that particular unit, namely, Bengal.

I therefore suggest that in paragraph 10 of the Report of the Finance sub-Committee, the words "including export duties" be deleted from the first item of Federal Sources of Taxation. I would limit this item to import duties only. If we do so we shall be acting on sound canons of political economy. Instead of burdening this Note with well-known principles on this subject, I would draw attention to Mr. Donald Kerr's book, "The Law of the Australian Constitution," page 139, in which it is to be found the following quotation from Professor Moore's opinion on the subject:—

" 'Duties of Customs' mean duties imposed upon the importation of goods into the Commonwealth from parts beyond the Commonwealth."

There remains only one point to be considered, namely, how during the interim period the expenses of the Federal Government can be met. It is true that the present Central Government, many of whose duties and functions will be taken over by the Federal Government, depended for a number of years on this source of revenue, and a sudden change may add to the difficulties of the position. I therefore suggest the following:—

(a) That export duty on all commodities, at any rate export duty on jute, should be abolished after a period of five years, and

(b) That during this period of five years half of the amount realised from the export duty on jute will be handed over to the Province of Bengal, which is the federating Unit where this commodity exists on a large scale.

In support of this submission I may point out that during the last 14 years the export duty on jute has contributed nearly fifty crores of rupees to the Exchequer of the Central Government, and to that extent it has relieved the tax-payer very largely. It will, therefore, be a bare act of

justice if, during the next five years, the dire necessities of the unit of its origin be relieved by the payment of half the amount realised by this duty.

I would conclude my observations by saying that the decision of the Federal Structure Committee on this point will be an acid test as to whether India with a Federal Government can reasonably be expected to do justice between the different federating units. In a federation conflicting interests between the federating units will constantly arise, and it will be necessary for representatives of India in the Federal Legislature and the Federal Executive to act with justice and fair-play. If, at this very threshold of the Federation, the very distinguished representatives from all parts of India allow the immediate needs of money to override canons of justice and fair-play, then I am afraid that the prospects of the smooth working of the Federation are not very bright. I feel that on the materials I have placed before them I can appeal with confidence to the sense of all-India nationalism of the distinguished members of this Committee to do this bare act of justice to the federating Unit of which I have the honour to be the sole representative—the more so as I have offered to bear more than a legitimate burden during the period of transition.

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## APPENDIX V.

### NOTES ON FEDERAL FINANCE BY SIR PROVASH CHUNDER MITTER.

The discussions in the Federal Structure Committee on the Report of the Finance sub-Committee brought out prominently two points: (a) apprehension on the part of some of the representatives of the Indian States about accepting financial arrangements without a fuller knowledge of their implications, although these States are equally anxious with the British India representatives to enter into federation as early as possible, and (b) apprehension on the part of a number of the members of the sub-Committee about delay in the declaration of policy by His Majesty's Government and in the drafting of the Act embodying a Federal Constitution if decision had to be deferred until the two Expert Committees had submitted their Report. In the opinion of many members the consequences of such delay would be very serious indeed.

This Note is submitted for a two-fold purpose. One of the objects of this Note is to suggest a procedure which, while keeping in view the two points mentioned in paragraph 1, may enable the Act to be drafted in the quickest possible time, and will at any rate enable His Majesty's Government, if they so desire, to declare their policy about setting up a Federal Constitution in India before the dispersal of the Round Table Conference. The second object of this Note is to place materials which, it is hoped, will be useful in dealing with questions of substance relating to Federal finance.

I suggest that it is possible to draft the Act itself, taking power to impose the details of taxation within the limits of the main heads set out in the Schedules attached, marked A, B, and C, respectively. The Act should also contain rule-making powers, and even powers to make certain constitutional changes which would enable the future Federal Government to make necessary constitutional amendments and adjustments; on a point like safeguarding of the interest of minorities, or of financial interests of Indian States, such amendments may well be with the concurrence of His Majesty's Government. A provision like that will give a sense of security to minorities and to the Indian States.

So long as the members of this Committee are on the whole satisfied that the heads of taxation would *prima facie* be enough to meet the expenditure, and so long as the Indian States come to the conclusion that the heads suggested are likely to cause the minimum of prejudice to their interests,

there should be no objection to proceeding as early as possible with the drafting of the Act, provided that His Majesty's Government are also willing to make the necessary declaration. Further, in the constitutional proposals and arrangements for changing financial heads, some safeguarding clause may well be kept in view, such as that a change in financial arrangements will not be made, say, during the next 15 years by the Federal Government without the approval of the Federal Legislature unless a number of the Indian States who have joined the Federation (say, the representatives of the States with 40 per cent., of the population of those who joined) accept such change, and a similar reservation may also be made with regard to British India. Such an arrangement ought to remove a good deal of apprehension.

I will next draw attention to the three Schedules which are attached.

One of the items which requires explanation in order to elucidate my suggestions on the subject is Item 7 of Schedule A. I believe that from Corporation Tax from British India about 3·20 crores of rupees is likely to be raised (the actual figure may be examined, and this should not take much time). I am not aware as to how much can be raised from the Indian States under this head. I have, however, made some informal enquiries from one or two States and my impression is that there is no existing tax in the Indian States under this head, so that by submitting to this head the existing Budget of any State is not likely to be disturbed. My further impression is that taxes on this head will perhaps bring in not more than 40 lakhs of rupees from the Indian States. This, I admit, is more or less guesswork, but I have very little doubt that the percentage of the income derived under this head from the Indian States will not exceed 15 per cent., or thereabouts, of the income derived from British India under this head. It will therefore be a permanent advantage to the Indian States to submit to Corporation Tax. Further, submission to Corporation Tax will make a common element of direct taxation available to all the federating units, and on the question of principle it will mean an advantage.

Some of the arguments I have referred to above about Corporation Tax will apply with regard to a tax on income derived from business extending over more than one Province or State or extending over territories outside India. Here, too, the tax raised from British India will certainly be 5 or 6 times more than the tax that is likely to be raised in the Indian States. Here, too, I believe there is no such tax at present existing in any Indian State and the imposition of such a tax will not upset any existing Budget. To this should be added tax on interest on securities. Anyone who holds securities at the present moment has to pay this tax, unless they are in the nature of some War Bonds held free of income-tax. I have not the necessary materials before me showing what amount will be realised in British India, but I believe the amount realised in British India on this head, including the head of interest on securities, will not be less than 5 crores of rupees, perhaps more. Even if I assume, purely as a piece of guesswork, that the additional income derived from the Indian States on this head will be about 25-30 lakhs of rupees, I do not think I shall be far out. Here, too, it will be a permanent advantage to the Indian States to submit to this taxation as the share of British India will be far higher.

These heads, therefore, without taking into account salaries of employees of the Federal Government and income earned outside India on foreign investments, will produce a permanent contribution in direct taxation to the Federal Exchequer of about 9 crores of rupees. The actual figures may be investigated and this can be done very quickly so far as British India's portion of the tax is concerned. As regards the portion of the Indian States no enquiry need be insisted upon, as well-known facts of a general nature will show that the amount is not likely to be large. On the British India side we get the advantage of the establishment of uniformity and of a sound principle. the income from salaries of Federal employees has been estimated by the Memorandum of the Finance Department of the Government of India as 1 core of rupees, therefore the total will be 10 crores of

rupees, of which the share of the Indian States will be comparatively small. In view of some of the criticisms may by Lord Lothian, criticisms with which I personally agree, a system like this will be very conducive to the smooth working of the future constitution. Further, a system like this will avoid the risk of the imposition of double taxation, one set of taxation being imposed by the Federal Government and the other by the Provincial Governments of the Central Government. It will further avoid the unsatisfactory arrangement proposed in the last six lines of paragraph 2 of page 9, of the Report of the Federal Finance sub-Committee, namely, that the Federal Finance Minister should consult the Provincial Finance Ministers about the extent of the imposition of Income-tax. Lastly, this system will get rid of re-distribution of Income-tax, collected on the present basis, to the Provinces and such re-distribution is sure to lead to wrangles and ill-will between the Provinces.

The next items to which I would draw specific attention are the items in Schedule C. If all sources of taxation, even including those of the existing taxation covered by Schedule A, are left to the Indian States, then the Indian States should feel very much less hesitation in joining the Federation than they would do at the present moment without any enquiry.

Item 7 of Schedule B is also important. This suggestion, if accepted, will automatically increase the income of the Provinces, without going through the procedure of distribution wrangles. As Lord Lothian pointed out, most of us who have to deal with the problem could not altogether forget the present arrangement, nor could some of us forget the suggestions made by Sir Walter Layton in the Indian Statutory Commission's Report. At the present moment Income-tax is collected by a unitary government; in the future we are going to have a system of taxation suitable for a Federal Government, and we cannot over-emphasise this difference. The Indian Statutory Commission was also dealing with the finances of a unitary government, and at that stage there was no question of the Indian Princes joining in a Federal Government. Therefore the less we retain of the existing system and the more we try to visualise the future the better it will be for the proposed Constitution. Increased income to the Provinces will also mean the better economic position of the citizen, and is likely to affect beneficially not only the customs revenue but all sources of Federal revenue under heads 7 and 8 of Schedule A. That is an aspect of the question which should be borne in mind.

Only another important point remains to be considered. Can the budget be *primâ facie* balanced if these suggestions are accepted? I venture to think that there is a better chance of the budget being *primâ facie* balanced if these suggestions be accepted than under the system proposed in the Memorandum of the Finance Department of the Government of India, and even that of the Report of the Finance Sub-Committee. In order to deal with this point I attach herewith an extract from the illustrative Budget taken from page 12 of the Memorandum of the Finance Department of the Government of India, which is marked with the letter "X."

It will appear from this extract that there is an apparent surplus of .94 crores of rupees of receipts over expenditure. It will, however, further appear that I have not taken into account here the last two items of "interest" and "sinking fund contribution" of this illustrative Budget on page 12. If I took these two items into account there would be a deficit. I propose to show how these deficit will more than disappear under my scheme. I have already submitted in a previous portion of this Note that I propose to include Item 7 of Schedule A as a permanent source of revenue to the Federal Government, and that this source is likely to bring in about 10 crores of rupees. These 10 crores of rupees will more than cover the deficit, and perhaps leave some surplus.

There are four other items to which I would draw specific attention. The military expenditure in the illustrative Budget is estimated to be 50 crores of rupees net. According to a report published in the London "Times," dated September 30th, 1931, and also in a recent issue of the Calcutta

"Statesman," it would appear that Sir George Schuster proposes a net reduction of army expenditure of  $4\frac{1}{2}$  crores of rupees. Of course that figure includes army expenditure for Burma as well. Under the illustrative Budget Burma's army expenditure is not included, but I think I can, on Sir George Schuster's figures, safely count upon a reduction of 3 crores of rupees from the Military expenditure of 50 crores of rupees for India alone. There will also be some saving under the recent retrenchment proposals and reduction of salaries, some of these retrenchments and reductions being of a permanent nature.

Item 2 includes the estimated income from Customs. At the present moment this includes a certain income from export duties. I have already submitted a Note about export duties, and I have suggested that all export duties should be abolished after 5 years, and that during these 5 years only half of the export duties should be retained by the Federal Government. I would, therefore, deduct 2 crores of rupees from the income estimated under Customs.

Item 3 is payments by Indian States (tributes) and the .74 crores should be deducted on the receipts side. These calculations will show that this Budget will practically be a balanced Budget, but there are a number of other items in the nature of indirect taxation about which we have certain figures of probable revenue. If unfortunately, for some unforeseen reason, expenditure increases or income falls, we may well look to one or more of these items for balancing the Budget. These items are excises on matches, tobacco, silver, and kerosene and petroleum. All these items come under head 4 of Schedule A. In imposing all or any of these indirect taxes I would be willing to allow the Indian States to retain them if at the present moment there is any such tax in any State. The estimate of Sir Walter Layton from the match excise from British India alone, was 3 crores of rupees, and from manufactured tobacco (pipe tobacco, cigars and cigarettes) 5 crores of rupees. I know these estimates have been criticised by the Government of India and the income may be less than is estimated, but there will be some increase as the realisation will be not only from British India but also from the Indian States.

Under the interim Budget recently introduced by Sir George Schuster he has already proposed a 25 per cent. increase on silver and kerosene, amongst others. In the illustrative budget quoted on page 12 of the Memorandum of the Finance Department of the Government of India this increase has not been taken into account. From these four items of excise, if need be, one may reasonably expect in normal times 9-10 crores of rupees, and the contribution of the subjects of the Indian States will be comparatively small.

The appointment of two Expert Committees has been suggested in the Report of the Federal Finance sub-Committee. The first enquiry would be a general survey of the problem and an examination of the questions dealt with in paragraphs 5 to 17 and 21 to 25 of the Report. Instead of appointing this Expert Committee at this stage, figures may be obtained from the India Office to ascertain roughly what would be the income in normal times of the Federal Government from the heads of taxation suggested by me. If on receipt of this information it appears that there is a very reasonable chance of the Budget being balanced in normal times, His Majesty's Government should go ahead with the declaration of their policy, and the drafting of the Act, after ascertaining the concurrence of the Federal Structure sub-Committee. If this first Expert Committee be appointed, it should be appointed with modified terms of reference, after the Act has been passed for the preparation of the Statutory Rules. In other words I advocate a procedure similar to the one followed when the Montagu-Chelmsford Report was submitted. Then the Government of India Act was passed in 1919, the Statutory Devolution Rules were prepared thereafter, and the constitution came into operation later on when most of the Statutory Rules were ready.

The second enquiry would relate to the Indian States, and would no doubt require considerable time. That enquiry is very important from the

point of view of doing justice between the States and British India. Materials will undoubtedly be necessary. The Report of this second Committee may well be submitted to the Federal Government of the future. In order to give every reasonable confidence to the States, I personally have no objection to giving a right of appeal to the States on the Report of the second Committee from the decision of the Federal Government to His Majesty's Government. If such a right of appeal be conceded the States cannot have any reasonable ground for complaint, because at the present moment and under rules of paramountcy the decision of these questions lies ultimately with His Majesty's Government.

I would therefore submit that if the outlines of my suggestions be accepted, there need not be any difficulty about beginning the drafting of the Act at the earliest possible time, provided that His Majesty's Government be willing to make the declaration of policy before the Round Table Conference disperses from London.

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#### SCHEDULE A.

##### *Federal Sources of Taxation.*

1. External customs.
2. Salt.
3. Export opium.
4. Excises on articles with the exception of excises on alcohol, narcotics and drugs.
5. Receipts from Federal Railways, Federal Posts and Telegraphs and other Federal commercial undertakings.
6. Profits of Federal currency.
7. Corporation tax, tax on income derived from business extending over more than one Province or State or extending over territories outside India, tax on interest on securities as defined in Section 8 of the Indian Income-tax Act, 1922, salaries of employees of the Federal Government, and on income earned outside India on foreign investments (this may be more specifically defined under the powers taken under the rule-making sections of the Act).
8. Commercial stamps (to be more specifically defined under the powers taken under the rule-making sections of the Act).

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#### SCHEDULE B.

##### *Provincial Sources of Taxation.*

1. Land revenue.
2. Excises on alcohol, narcotics and drugs.
3. Stamps, judicial and non-judicial, with the exception of commercial stamps.
4. Forests.
5. Provincial commercial undertakings
6. Succession duties, if any.
7. Income-tax on all sources of income other than those referred to in Item 7 of Schedule A, including income-tax on property within the Province or State, salaries earned within the Province or State by all persons other than employees of the Federal Government business carried on within the Province or State, earnings from professionals within the Province or State.

## SCHEDULE C.

*Sources of Taxation in the Indian States.*

1. All sources of taxation other than those included in Schedule A.

2. Continuance of existing taxes, even though included in Schedule A.

*Extracts from the Illustrative Budget taken from page 12 of the Memorandum of the Finance Department of the Government of India.*

Expenditure.	Reserved.	Receipts.
50,00 (net)	Military (1) . . . . .	..
1,60	Political . . . . .	..
1,91	Frontier Watch and Ward . .	..
,31	Territorial and political pensions	..
,30	Ecclesiastical . . . . .	..
<u>54,12</u>		<u>..</u>
	<i>Unreserved.</i>	
,85	Customs (2) . . . . .	53,01
1,23	Salt . . . . .	6,70
	Opium . . . . .	,15
	Railway contribution . . . .	5,01
	Payments by Indian States (3) . .	,74
	Taxes on Income (Federal) . .	Gross 1,00 less ,04 Collection charges ,96
1,68	General administrations . . .	..
,33	Audit . . . . .	..
,91	Scientific Departments . . .	..
,34	Aviation . . . . .	..
,18	Grants to Universities . . .	..
,17 (net)	Agricultural Research, etc. . .	..
,27 (net)	Stationery and Printing . . .	..
,95 (net)	Civil works . . . . .	..
4,09	Administered arrears . . . .	2,14
,60 (net)	Miscellaneous and other heads . .	..
2,36	Pensions . . . . .	,31
<u>68,08</u>		<u>69,02</u>



## APPENDIX VI.

MEMORANDUM BY HIS HIGHNESS THE MAHARAJA OF INDORE,  
HIS HIGHNESS THE MAHARAJ RANA OF DHOLPUR, NAWAB  
LIAQAT HAYAT KHAN AND SIR PRABHASHANKAR PATTANI.

The future constitution of India has been the subject of close examination by many able and eminent authorities, and as it was considered necessary to bring about a union between British India and the Indian States for determining the policies in regard to subjects of common concern, and execution and administration thereof, various methods for bringing about that unity have been explored, and proposals formulated during the past few years. At the Round Table Conference held last year, however, the suggestion to bring about such a union on the Federal basis took more definite shape and the deliberations of the Conference proceeded on the basis that the future constitution of India should be of a Federal type embracing both British India and the Indian States. The precise form and structure of the new Federal Government, as rightly stated *inter alia* by the Prime Minister in the declaration made by him on behalf of His Majesty's Government on 19th January, 1931, was to be determined after further discussion with the Princes and representatives of British India.

The Conference has resumed its work and the Federal Structure Committee is now engaged in formulating the precise form and structure of the new constitution in all the minute details. This must naturally require working out and evolving a scheme that might be acceptable to the various interests concerned.

To secure the support and adherence to it, the constitution must take due note of all the various standpoints on the several details and provide for them adequately; failing that, it would not have the necessary support, and, consequently, would not work successfully, and if it is pushed through under pressure, it is likely to do more harm than good.

The Federal Structure Committee outlined, after their deliberations last year, a scheme for the proposed future Federal Constitution for India. Details on important points were left over for further consideration last year and they are being taken up now. As I was not then a member of the Round Table Conference, and had no occasion to communicate my views to the Indian States' Delegation or the Conference, I consider it advisable for me to express my views at this stage on the several important points at issue, and take this opportunity of placing them on record for consideration.

In introducing the scheme hereafter stated, I shall add one observation, *viz.*: that the future constitution for all-India on the Federal basis will have to be on the basis suited to the peculiar conditions in the country, and not on the basis of the constitutions of a Federal type existing in other countries. If no two of those constitutions are exactly alike, there is greater reason and justification for India with her peculiar conditions and a large variety of interests (*e.g.*, non-autonomous Provinces and Sovereign Indian States) to evolve our own scheme and a constitution which would be suited to, and satisfy the requirements of, the several interests, and varying and peculiar conditions and sentiments of the people and their Princes.

In my opinion, the main features of the constitution should proceed on the following lines:—

1. *The Federating Units to be—*

- (1) Federated British Indian Provinces, *i.e.*, British India and
- (2) The States collectively.

The States will, with the assent of the Crown, constitute themselves into an Electoral college which may be given any suitable name, *i.e.*, all the States will make one group or unit for the purpose of electing their quota of representatives to the Federal Legislature.

2. *Federation to be for purposes of specified matters of common interest only.*

3. *Functions.*

Policy and Legislation in regard to, and administration of, certain specified subjects, as detailed in Annex. A.

NOTE.—The Federal Legislature will lay down policy and enact laws relating to the subjects enumerated in Annex. A.

The States will, then, automatically pass the Federal Laws as State Laws and they will then come into force within the territories of the States.

In the event of failure on the part of any State to carry out the policy and laws passed, the Confederation of States will use its influence and bring round the defaulting State through its representative; but even if that fails, which is not likely, the Federal Government will take necessary action through the Crown.

4. *Structure and Composition of the Federal Government.*

(a) *Legislature.*

There should be preferably only one Chamber, to which representatives could be sent by States through the Electoral College referred to above. The representation of the Indian States should be 50 per cent. If it is bicameral, the States should have 50 per cent. representation in the Upper Chamber and on population basis in the Lower Chamber.

(b) *Executive.*

(1) The States need not insist on a fixed number of representatives in the Federal Executive.

(2) The Executive will be responsible to the Legislature.

5. *Method of Election of States Representatives.*

The States will constitute themselves into a Confederation for the purpose of Federation with British India. This will serve as an Electoral college for electing their representatives to the Federal legislature. The Confederation will be composed of representatives of Sovereign States and of groups of the remaining States.

Major States may be allotted a fixed number of seats to ensure their individual representation, and some regional distribution may also take place. For the purposes of election the principle of plural voting may be accepted, the number of votes allotted to a particular State depending on the State's political position, though population and income may also be given due weight. The details will be settled by the States themselves.

The representatives constituting the quota of the States will represent the States collectively, and they will include among them representatives of major States for whom seats will be reserved.

6. *Federal Finance.*

Federal finance will be found from indirect taxation only, so far as at least the States are concerned.

7. *Supreme Court and Arbitration Courts.*

There should be a Court to deal with constitutional question only. In case the volume of work does not justify the constitution of a permanent Court, provisions should be made for the constitution of a Court each time as the occasion arises but the qualifications of the eligible personnel and the method of its constitution shall have to be specifically and definitely laid down in the constitution.

For disputes between the Crown and the Indian States, provision should be made that they shall be settled by an Impartial Court of Arbitration, distinctly separate from the Federal Court, the constitution of which should also be defined beforehand. The Arbitration Court should also decide disputes between a State or States and Provinces *inter se*, or between a State or States and Central Government of British India. Neither the Federal Court nor the Court of Arbitration shall exercise jurisdiction as the highest Court of Appeal.

### ANNEX A.

Number as in the Devolution Rules.	SUBJECT.
5.	(a) Railways . . . . Federal, for Policy and Legislation, Administration to be Federal only for through lines.
	(b) Aircraft and all matters connected therewith. Ditto.
	(c) Inland Waterways, etc. . Federal, for Policy and Legislation in respect of inland waterways, affecting more than one component State.
6.	Shipping and Navigation, etc. Federal, for Policy and Legislation.
7.	Lighthouses, etc. . . . Federal, for Policy and Legislation.
8.	Port Quarantine and Marine Hospitals. Federal as far as international requirements are concerned.
9.	Ports . . . . . No special opinion.
10.	Posts, telegraphs, telephones (including wireless installations). Posts, telegraphs, Trunk telephones and wireless installation to be Federal, but with such qualifications as may be necessary for the purposes of adjustment with the States in matters of detail.
11.	Customs . . . . . 1. Maritime Customs: Federal, subject to special rights and obligations under Treaties, agreements and engagements with the Maritime States. 2. On external frontiers of India: Federal, subject to special case of Kashmir.
	Salt . . . . . Federal, subject to the existing rights of the Indian States.
12.	Currency and Coinage . Federal, subject to adjustment, with the States concerned, of such rights as are not already conceded by them.
14.	Savings Bank . . . . Post Office Savings Bank: Federal for Policy and Legislation.
15.	Indian Audit Dept. . . . Federal Audit to be Federal.
21.	Control of Cultivation and Manufacture of Opium. Federal, for Policy and Legislation.
	Sale of Opium for export.
22.	Stores and Stationery required for Imperial Departments. For Federal Departments to be Federal.
24.	Geological Survey of India . Federal.

Number as  
in the  
Devolution  
Rules.

SUBJECT.

- |     |   |   |
|-----|---|---|
| 26. | Botanical Survey of India .                                 | Federal.  |
| 27. | Inventions and Designs .                                    | Federal for Policy and Legislation.   |
| 28. | Copyright . . . .   | Federal for Policy and Legislation.   |
| 29. | Emigration from and immi-<br>gration into British<br>India. | Emigration from and immigration<br>into India: Federal for Policy<br>and Legislation.                 |
| 31. | Central Police Organisation                                 | Federal Police to be Federal.   |
| 35. | Survey of India . . .                                       | Federal.  |
| 38. | Meteorology . . . .   | Federal.  |
| 39. | Census Statistics . . .                                     | Federal for Policy and Legislation.   |
| 40. | All-India Services . . .                                    | Federal services should be Federal.   |
| 44. | Immovable property, etc. .                                  | Immovable property acquired and<br>maintained at the cost of Federal<br>Government should be Federal. |
| 45. | Public Services Commission.                                 | Federal for the purposes of Federal<br>Services.  |

NOTE.—The remaining subjects should not be federalised.

## APPENDIX VII.

### MEMORANDUM BY MR. A. LATIFI ON A PROPOSED FEDERAL COUNCIL.

(Circulated at the request of Mr. M. K. Gandhi.)

As an immediate step towards Federation, it is suggested that a Federal Council with advisory functions may be set up, in order to perform functions like those mentioned in the following schedule or any others that may be agreed upon. It is hoped that such a Council would keep the Central Executive responsive to the Provincial Governments just as the Central Executive is expected to be responsible to the Central Legislature. It would help the Provinces to "feel that they are represented at the Centre" and thus implement the recommendation in paragraph 32 of the Second Report of the Federal Structure sub-Committee where it is stated that "in their view it is of the utmost importance that the tie between the Centre and the units should be as closely knit as possible; and that it should be a tie of natural affinity of outlook and interest and capable of counteracting the centrifugal tendencies which, but for such a counterpoise, would be liable to develop in the Provinces from the increased autonomy now in prospect."

The Federal Council should, it is suggested, be formed more or less on the lines of the Bundesrat of the German Constitution of 1870,\* but the analogy of the Imperial Conference, as well as of the Council of the League of Nations, would be in point. The Council may, with the Governor-General as President, include the Governor-General's Executive Council and the members of the Governments of the various federating units each such Government being represented in person or by proxy by its members (other than the Governor or Ruler) up to the number of votes it can cast. The votes of each unit—to be cast en bloc—may correspond to that unit's strength in the Senate.

(Signed) A. LATIFI.

\* For a good, and indeed the classical English description of the Bundesrat of 1870, see A. L. Lowell's "Government and Parties in Continental Europe," Vol. I, Ch. 4.

## SCHEDULE.

### ADVISORY FUNCTIONS OF THE FEDERAL COUNCIL.

Council of Greater India in regard to those States which do not join the Federation (Simon Report, Vol. II, paragraphs 236-237, 315).

Inter-Provincial Financial Council (Simon Report, Vol. II, paragraphs 163, 305). Particularly in such matters as fixing the rates of the Income-tax.

Provincial Loan Council (Simon Report, Vol. II, paragraph 311).

Council for advising in the co-ordination of Inter-Provincial activities (Simon Report, Vol. I, paragraphs 258-259, and Vol. II, paragraphs 184-187).

Council for the ratification of international agreements, the approval of emergency taxation under section 21 of the Federal Finance Sub-Committee's report, and advice on matters like those for which an Indian Privy Council is suggested in the Simon Report, Vol. II, paragraph 231, bottom of page 199.

## APPENDIX VIII.

### NOTE ON THE PROPOSED FEDERAL LEGISLATURE FOR INDIA BY SIR MIRZA ISMAIL.

The most important question on which the Conference has still to reach a final decision is the constitution of the Federal Government.

The main suggestions of the Report of the Federal Structure Committee were:—

(1) The Federal legislature to consist of two Houses; the component elements of the Federation to be represented in both Houses, Joint Sessions being held whenever differences of opinion between the two Houses arise.

(2) The Executive to be responsible to the Legislature.

(3) Reserved subjects and safeguards in financial matters.

The Legislature, as proposed by the Federal Structure sub-Committee, has the appearance of a bi-cameral Legislature, but it is not really so. It will function as a uni-cameral legislature—an unnecessarily unwieldy one of some 600 or 700 members—on all occasions when a difference of opinion arises between the two Houses.

The question is whether such a constitution is likely to work smoothly and effectively, and suit the needs of a vast and heterogenous country. Experience has shown that in many Federal constitutions, Senates with concurrent powers have failed to justify their existence. No nation has been successful in constructing a body representing the Federal element in an effective because undiluted manner. The fault lies in the fact that nowhere have the States forming the federation been entrusted with co-operation in the work of the Central Government. In all constitutions the second Chambers have been made directly or indirectly representative of the parties in the federating units, who are already enabled to send their representatives to the Popular House. Thus, the political factor, namely, the people, is doubly represented, once in the Popular House and again in the second Chamber, even though its representatives are elected indirectly by the parliaments of the States. This is the considered opinion of some of the most eminent jurists of our day, and based not only on a profound and extensive study of constitutional law and practice in all countries of the world, but also upon actual experience of the practical working of a Senate in modern Federal States.

Would India do wisely to disregard the lessons of experience, and embark upon her great experiment without taking such facts into consideration?

The writer believes it to be possible to devise a constitution which will provide for, and remedy, this serious defect. He asks for consideration of the following plan.

The two principal organs of the Federal State of Greater India would be—

(1) A popular house, which may be described as the Federal Assembly; and

(2) Another body, which may be described as the Federal Council.

The Federal Assembly will consist of representatives chosen by direct and indirect election, preferably by both methods, the representation being more or less on a population basis. The number may be fixed at 300-350, the proportion of the members from the States being 33½ per cent. of the total strength. As regards the method of election, the suggestion made by Mahatma Gandhi, of villages sending their elected representatives to an electoral college to vote on their behalf, is likely to secure the best results, and is plainly more practical than the ordinary method of a direct vote.

As the Federal Council is to be that organ of the Federal Government which upholds the federal character of the constitution, it would be composed of delegates appointed by the Governments of the States and Provinces. The smaller the number of its members the more capable it is of doing effective work.

Unless the representatives composing the Federal Council are chosen in some way by the Governments of the units, the constitution will still be that of a unitary State, as the federal elements will be lacking. For this reason the members of the Federal Council should be appointed by the Governments of the States and Provinces at their own discretion and exclusively with reference to their expert knowledge. The representatives must vote and act according to the instructions which they receive as agents of their Governments. Plural votes of a State or a Province must be given uniformly. The Federal Council may consist of 60 members of whom at least 40 per cent. should be from the States.

The Central Government must be represented in the Federal Council in order to safeguard the co-operation of the supreme Federal authorities and to prevent the various elements in the Council from working on parallel lines or against each other.

#### *Legislative Powers of the Federal Council.*

The Federal Council would have a suspensory veto on laws passed by the Federal Assembly with which it did not agree.

If the Federal Council exercises its right of veto, the Federal Assembly would then have to show a qualified majority, i.e., a two-third or three-quarter majority, for its resolution. The right of veto would have to be exercised by the Council within an adequate period, to be determined by the constitution.

Bills prepared by the Federal Executive would be laid, first, before the Federal Council, and after having passed this body, before the Federal Assembly. If the Federal Council wished the Bills presented to be altered, the Federal Executive could modify the draft. If it did not do so, the Federal Council should have the right of adding to the draft its own **dissenting opinion**, on passing the Bill on to the Federal Assembly.

Besides the right of considering Bills introduced by the Executive, the Federal Council should share with the Assembly the right of introducing Bills. The members of both bodies should have the same right.

#### *Executive Functions of the Federal Council.*

In accordance with the nature of the Federal Council as the specifically federal organ of the Indian Federal State, it should be in possession of certain powers with regard to the Federal Executive. Its co-operation in this sphere can, however, only be of an advisory nature, if it is not to restrict

the Federal Executive unduly in the fulfilment of its task of government. The Federal Council might enjoy the right of demanding reports concerning current administrative matters from the Executive, and information regarding the preparation of future Bills.

The Federal Council, moreover, might have a right of co-operation in certain administrative matters, *e.g.*, external relations, like the Senate of the United States of America. Or, for example, the Federal Council might have a right to propose appointments to certain high official posts. The Government would not be rigidly bound by such proposals. In practice, however, the Government would presumably adopt them, unless there were any special objections.

The advantages of constituting the Upper House in the manner proposed, include the following:—

(1) It will be of a manageable size, and therefore better adapted for despatch of business and more economical in working than a larger body composed of some 250 or 300 members. It will cost less; it will attract better men without unduly depleting the Provincial and State Legislature.

(2) The members being selected with reference to their expert knowledge will be comparatively free from party influences, will be more "federally-minded" and less bound up with local and sectional affiliations.

(3) The points of view of the Governments of the units will find timely and authoritative expression in the Council, and the occasions for conflict between these Governments and the Central Executive will be avoided or reduced to a minimum.

(4) The objections of British India in regard to powers of financial control of the Upper House will be obviated.

(5) As the Council will be invested only with a suspensory, and not an absolute veto in Legislation, British India should have less hesitation in giving even 50 per cent. representation to the States in such a body.

(6) On the other hand, as an offset to its slightly inferior status in legislation, the Council will have large powers of initiative; the right of association with the Executive in certain administrative matters, and advisory influence in all matters of policy which concern the States and the Provinces. In these important functions, the States and British India will share equally.

(7) The scheme would allow of States sending delegates to address (without voting in) the Council on matters in which they may be specially interested. This should be an acceptable concession to those States which cannot hope for individual representation.

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## APPENDIX IX.

### MEMORANDA ON EXPORT DUTY ON JUTE AS A FEDERAL SOURCE OF REVENUE.

I.—By *Sir Provash Chunder Mitter and others.*

On the eve of the proposed Federation, we, the Bengal delegates, have carefully considered the question whether the export duty on jute—a monopoly produce of Bengal—should be allotted as a Federal source of taxation.

In the year 1929-30 the export duty on jute yielded Rs. 463.67 lakhs. Since this duty was imposed in 1916 Bengal has contributed nearly 50 crores to the Government of India from this source alone, thus affording considerable relief to the taxpayers of other Provinces. Besides this export duty, income-tax and super-tax derived from jute mills and jute business (quite

apart from income-tax derived in Bengal from other sources of income) are estimated to have contributed about 2½ crores annually to that Government.

Jute is grown by the ryots of Bengal under conditions of great hardship and difficulty, seriously affecting their health. In the past, on account of the existence of this export duty, it has not been possible to utilise this monopoly product of Bengal for raising revenue for the Provincial Exchequer. This is one of the main reasons why the Government of Bengal has been unable to take adequate steps for the amelioration of the condition of the peasantry, or for the promotion of the general welfare of the people of the Province.

The financial condition of the Government of Bengal for the last 11 years, and perhaps for a much longer period, has been well-nigh desperate—so much so that it has not often been possible for that Government to discharge efficiently even some of its primary functions. Under these circumstances it has been impossible for that Government to do what can be reasonably expected of every civilised government in the spheres of education, public health, agriculture, and other nation-building activities.

The allocation of the export duty on jute as a Federal source of revenue will be a form of discriminatory taxation to which we, the delegates from Bengal, can never agree. From what we have stated it would appear that no constitutional advance is worth having in Bengal unless adequate funds can be made available for the Province. Under the circumstances we regret to have to emphasise that it will serve no useful purpose for Bengal to join the Federation if this unreasonable sacrifice be demanded of her. We trust, however, that the sense of justice and fair-play of the members of the Federal Structure Committee will yet prevail, and that this discriminatory taxation will not be demanded of Bengal.

We have authorised the Bengal representative on that Committee to submit a fuller Note on the subject.

(Signed) P. C. MITTER.

A. K. FAZL-UL-HUQ.

NARENDRA NATH LAW.

J. N. BASU.

I agree. I sign this, subject to one observation. I have heard it stated that as jute is a monopoly of Bengal, the export duty on jute is really paid, not by the taxpayers of Bengal, but by the foreign purchaser. This opinion is held, amongst others, by some who, as officials or non-officials, are more interested in the welfare of other Provinces than that of Bengal. I do not at all agree with this view, and I am of the opinion that this argument does not bear any close examination.

It is true that jute is a monopoly of Bengal in the sense that it is grown in Bengal and it is not grown in other parts of the world. But the question of substance is whether the foreign buyer really pays the tax, the producer being in no way affected because of the existence of the tax. If in a particular year the total demand for gunny or hessian or loose jute by the foreign buyer is less than the amount manufactured or produced in Bengal, then in such a year the foreign buyer is in a position to dictate the price either of the manufactured article or of raw jute. In post-war days such a contingency has constantly arisen. In such years, therefore, jute mills in Bengal or the exporter of raw jute must agree to the price paid by the foreign buyer. The export duty in such years must largely, if not wholly, fall upon the manufacturer, or the primary producer, the ryot.

The position of the primary producer, the ryot, is, however, different from that of the manufacturer in every year. For many reasons into which I need not enter, the ryot can never control the price, and as jute is a monopoly crop there is always the tendency on the part of the ryot to increase the cultivation of jute. Even in years when the demand of the



foreign buyer is large, there is a wide difference between the price received by the ryots and the price paid in foreign markets, and the existence of the export duty is a material factor which the exporter or manufacturer of jute in Bengal will always take into consideration in fixing the price.

Then again the jute produced by the ryot comes into the hands of the purchaser for the jute mills or the export trade through many intermediaries, and the existence of these intermediaries makes it more difficult for the ryot to fix his price. In order to grow jute the ryot has to undergo many hardships, and has to work under conditions which must affect his health. One process in the preparation of jute is to keep it in water for a number of days, and then to separate the fibre from the stem by a manual process while standing in the water. Keeping the jute submerged in water for a number of days breeds malaria and other diseases in the neighbourhood.

If Bengal could get the value of the jute as a source of revenue for the Province, then one of the great problems of Bengal, namely, the existence of malaria on a wide scale, would be reduced.

For all these reasons I think it is a mistake to assume that the export duty on jute is really paid by the foreign purchaser, and that the manufacturer or the primary producer are in no way affected or concerned by the export duty.

Assuming, however, for the sake of argument, that jute is a monopoly and that the export duty too is paid by the foreign purchaser, then Bengal cannot in justice be denied the profits received from that monopoly, as it is conceded that that monopoly is a monopoly of Bengal. Why should the rest of India be allowed to profit by this monopoly which so seriously affects the health conditions of the Province and the amenities of life of an overwhelming section of its poorest population, namely, the agriculturists.

Lastly, monopoly or no monopoly, with the existence of the export duty it is not possible for the Government of Bengal to impose any tax in any shape or form on jute. There is, therefore, the question of substance that taxation of jute as a source of export duty precludes the Government of Bengal from deriving any revenue by taxing jute.

(Signed) P. C. MITTER.

## II.—By Mr. A. H. Ghuznavi.

The financial difficulties of Bengal under the Montagu-Chelmsford Reforms are notorious.

Potentially one of the richest Provinces in India, Bengal is actually, from the point of public revenue, one of the poorest. There is no need to detail the causes which have led to this state of affairs, for they are well understood. The outstanding cause is that certain revenues, of which the richest yield is from Bengal, have been declared to be central sources of revenue.

With regard to Income-tax the difficulty of allotment is notorious, but no such difficulty exists in the case of the export duty on jute. Every argument supports the contention that this should be a Provincial source of revenue.

In the interests of the down-trodden peasantry of Bengal, I ask that the export duty on jute should be classified as a Provincial and not a Federal source of revenue in paragraph 10 of the Report of the Federal Finance sub-Committee.

The export duty on jute was first imposed in 1916 as a purely War measure, but it has been continued to this day in the teeth of the just protests of every section of the people of Bengal. The reason is, of course, that the duty has been found very profitable, its yield in 1929-30 being Rs. 463-67 lakhs, or over 92 per cent. of the total export duties realised in all India.

The land revenue, as representing the State's share in the profits of agricultural land, is the back-bone of the finances of every Province of India. In Bengal, however, this source of revenue has been very seriously curtailed

by the permanent settlement of land effected 150 years ago. It is, therefore, all the more necessary that the export duty on Bengal jute, which is the product of the most localised industry in the world, should, as being a tax on the produce of land, be made a Provincial source of revenue. It would thus become available for the uplift of the peasantry from whom it is taken and generally relieve the crippled finances of the Province of Bengal. In my contention I have the support of the precedents of Section 51 of the Australian Constitution,\* and Section 9 of the Constitution of the United States of America.†

It is submitted that both equity and comparison with practice in more favoured Provinces elsewhere, require that this large sum of money produced by Bengali labour and Bengali enterprise, be made available for the development and welfare of the Bengali people, whose progress has hitherto been hindered and stultified for want of means.

Refusal to comply with this request will provide a continual source of discontent in Bengal, since this export duty, being levied on a monopoly, for which hitherto no efficient substitute has been found, is an economic tax, and is one which is certain to be permanent. It can hardly seriously be contended that the people of Bengal can be deprived for all time of the proceeds of this duty, which is entirely the fruit of their own industry. Indeed, such a permanent deprivation would be nothing less than an act of discrimination by the Federation against Bengal, and would be bitterly resented as such.

(Signed) A. H. GHUZZAVI.

\* The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to . . . Taxation; but so as not to discriminate between States or parts of States.

† No tax or duty shall be laid on articles exported from any State.



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